



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

DATE DUE
8/26

LIBRARY
OF THE
UNIVERSITY OF CALIFORNIA.

Class

Corporations

A Study of the Origin and Development of Great
Business Combinations and of their Rela-
tion to the Authority of the State

By
John P. Davis, Ph.D.

Two Volumes

Volume I.



G. P. Putnam's Sons
New York and London
The Knickerbocker Press
1905

HD 2721
-D3
.1

2-11-1905

COPYRIGHT, 1905
BY
K. E. DAVIS

The Knickerbocker Press, New York

PREFACE

AS the following pages are about to be given to the public I am reminded of the story told of a professor in one of the German universities. He had announced for the semester a course of lectures on the political institutions of the Middle Ages; when the end of the semester was reached he had only just finished his introductory remarks. A few years ago I projected a study of the modern "corporation question," and intended to clear the ground for the subject by a short introductory chapter on the history of corporations. I am now congratulating myself that the introduction has consumed no more than three years and has demanded no more than thirteen chapters. The present volumes are intended to serve as an introduction to a volume on the subject of modern corporations, especially those in the United States, to be written during the next five or ten years. Chapter XIV. is not intended to be exhaustive, but to show briefly the connection between the old and modern corporations.

In the early history of the United States and Canada many corporations are found that would have to be classified with the corporations described in the present volume; but few references have, however, been made to these, because I have conceived it more convenient to consider them in connection with modern corporations. To have made place for their consideration in connection with the classes of English corporations to which they belonged might have distracted the attention of the

student and have interfered with the effectiveness of the main narrative.

It need hardly be suggested that the present volumes are to be considered not as a work of historical research, but as an interpretation of existing and accessible historical material. When particular classes of corporations have been adequately considered by scholars, I have been glad to accept the results of their labors, while I have frequently taken the liberty to disagree with these scholars in their interpretation of the facts. My indebtedness to others I have aimed to acknowledge fully in footnotes and references. It is unfortunate that so few classes of corporations have been critically studied by scholars. With the exception of certain kinds of guilds and of the mediæval universities, they have been greatly neglected. Why have authoritative histories never been written of the English municipalities, the monastic associations, of the Merchants of the Staple, the Merchant Adventurers, the Russia Company, the Turkey Company, the Eastland Company, the East India Company, the South Sea Company, the Hudson's Bay Company and the American Colonial Companies? An abundance of material is in existence, but only a small part of it is accessible to those who must confine their work to American libraries. As it has been my task to correlate and systematize the existing body of facts, taken for the most part from secondary sources, rather than to discover new facts, I have not often yielded to the temptation to indulge in research and investigation of original material.

A prerequisite to a study of corporations is a sound conception of their nature, itself derived from an extended study of their history. The technical legal conception of them is so clearly unscientific that it must sooner or later be greatly modified or entirely dispensed with. If I should find that I had contributed even in a

Preface

v

small degree to the formation of a new and better conception of corporations, I should feel that my labor had at least in that respect borne good fruit.

I indulge the hope that my efforts to make a scientific study of corporations may stimulate others to investigate special classes of corporations or special features of corporate life. The field is almost entirely new, and so broad that it offers very many inducements to investigators.

JOHN P. DAVIS.

BROOKLYN, N. Y., May, 1897.

NOTE

MR. DAVIS'S manuscript on corporations was completed April 8, 1897, and the preface written not later than six weeks after that date. Ill-health contracted during the period that he was engaged in the preparation of this work prevented him from writing the contemplated treatise on modern corporations. Leaving the East in 1897 in search of a climate where he might regain his health, he took up his residence at Nampa, Idaho, which place he claimed as his home until his death in December, 1903, at Asheville, N. C.

It must be regarded as a distinct loss to the literature of political science that a writer so well equipped to deal with the modern-corporation problem and so keenly alive to the significance of the present-day tendency toward the corporate form of organization did not live to complete the work which he had planned.

The painstaking work of reading the proofs of these volumes has been done by the author's legal representative.

J. ALLEN SMITH,
University of Washington.

December, 1904.

CONTENTS

CHAPTER	PAGE
I. INTRODUCTION	I
II. THE NATURE OF CORPORATIONS	13
III. ECCLESIASTICAL CORPORATIONS	35
IV. FEUDALISM AND CORPORATIONS	88
V. MUNICIPALITIES	92
VI. GILDS	130
VII. EDUCATIONAL AND ELEEMOSYNARY CORPORA- TIONS	245



AN INTRODUCTORY STUDY OF CORPORATIONS

I

INTRODUCTION

THE most important and conspicuous feature of the development of society in Europe and America on its formal or institutional side during the past century¹ (and particularly during the second half of it) has been the growth of corporations. The movement has been most noticeable in the domain of industry,² but has by no means been confined to it; only less influential has it been in religion, in the promotion of science, the arts and literature, in amusements, and in the satisfaction of the social-fraternal impulses of mankind.) So rapidly have the industrial corporations increased in numbers and wealth in the United States that they are counted by the

} x

¹ "When Alexander Hamilton wrote his celebrated report on the establishment of the First United States Bank in 1790, there existed only three banking corporations in the United States."—Richard T. Ely, "The Growth of Corporations," *Harper's Magazine*, vol. lxxv., p. 71 (June, 1885).

² "The rapid growth of private corporations is one of the striking features of the present industrial development. More prominent perhaps in the United States than elsewhere, it is nevertheless to be observed in all countries which have felt the spur of recent industrial progress."—"Statistics of Private Corporations," by Roland P. Falkner, in *Publications of American Statistical Association* (June, 1890), p. 50.

VOL. I.—I.

thousands¹ in the several States and are estimated to own from one fourth² to four fifths³ of all the property in the

¹ "Before 1850, [in Michigan] we had about forty-five mining corporations, seven or more railroad corporations, a few banking corporations, several plank-road corporations, and a few of a miscellaneous character; all, of course, under special charters [with the exception of religious corporations].

"General laws to the number of one hundred and fifty-six have been passed from time to time since 1850 for incorporating almost every kind of lawful business and association, and the result has been that we now have [in Michigan] about eight thousand corporations which are organized under those general laws, divided as follows: manufacturing and mercantile, twenty-five hundred; mining, thirteen hundred and twenty-eight; railroad, seventy-nine; street railway, one hundred and thirty-two; transportation, one hundred and twenty-three; state banking, one hundred and fifty-nine; charitable, two hundred and forty-eight; improvement, seventy-seven; miscellaneous, twenty-eight hundred and eighty-two.

"To this great number of domestic corporations must be added one hundred national banking corporations, and a large and not ascertainable number of foreign corporations, . . . which do business in this state by its express permission."—Address of President (Alfred Russell) at Jackson, Michigan, March, 1894, on "Corporations in Michigan," *Publications of Michigan Political Science Association*, No. 2, p. 97.

² "It is within the bounds of moderation to estimate the wealth of corporations as one-fourth of the total value of all property in the United States. The most significant fact, however, is the rapidly *increasing* proportion of all the resources of the country which belongs to corporations." Richard T. Ely, *op. cit.*, p. 73.

"Not far from one-quarter of the wealth of the United States is held by trading corporations. It is not improbable that half the permanent business investment of the country is owned in this way."—Arthur T. Hadley in *Railroad Transportation* (1885), pp. 42, 43.

³ "The facility with which corporations can now be formed has also increased [the Supreme Court's] business far beyond what it was in the early part of the century. Nearly all enterprises requiring for their successful prosecution large investments of capital are conducted by corporations. They, in fact, embrace every branch of industry and the wealth that they hold in the United States equals in value four-fifths of the entire property of the country. They carry on business with the citizens of every state as well as with foreign nations, and the litigation arising out of their transactions is enormous, giving rise to every possible question to which the jurisdiction of the federal courts extends."—Address of Justice Field at the Centennial Celebration of the Organization of the Federal Judiciary, at New York, February 4, 1890, 134, *U. S. R.*, 742.

nation, Hardly a supreme court in the land does not complain that more of its time and attention is devoted to cases involving corporations than to cases of any other kind.¹ The mass of laws, rules and decisions evolved from the creation of corporations and from the interpretation and enforcement of their rights and duties, both by legislatures and courts, has become so great and so confusing in its details, and at the same time the dependence of society on the activity of corporations has become so close and vital,² that special governmental bodies have been formed for the purpose of both restraining and protecting them, while the "corporation lawyer" has been clearly differentiated in the legal profession, and the corporation journal among publications. So extensively have the people become organized in corporations for almost every social purpose that, it is feared, the integrity

¹ *The Law and Jurisprudence of England and America* (pp. 376-377), John F. Dillon.

² "There can be no question that corporate organization has been of great advantage to the country—to the poor as well as the rich. By greater economy in production, rendered possible by concentration of capital, the poor have profited in the reduced price of most of the necessities and comforts of life. . . . The comfort and convenience of all dwellers in this country have been greatly promoted by corporate control of business. Take for instance our facilities for traveling. Again, the regularity and cheapness of communication by mail, telegraph, and telephone have only been made possible by the coöperation of hundreds of corporations all working together in intelligent harmony. Again, what could we do without banks, and without insurance companies? We owe it to the corporation that we can protect our property against loss by fire and our families from want in the case of the death of their breadwinner; and to the savings-banks that we can safely keep our surplus earnings, and receive them back again, safe and intact, with reasonable interest. And so we may sum it all up in one word and say that the conditions of modern life would be impossible were it not for the corporations. Whether sleeping or waking, engaged in business or pleasure, eating, drinking, dressing, or traveling, or whatever we may be about, we must thank them to a great extent for the means and opportunity of doing so."—William Jay, "The Corporation in Commerce," chapter viii. in *One Hundred Years of American Commerce*, vol. ii., pp. 47, 48.

of the individual as the unit of society within the state has been seriously impaired.¹ The anarchist views with delight the growth of corporations because he considers them the framework for the aggregation and consolidation of wealth that will eventually end in the destruction of all institutions. The socialist, not averse to the submersion of the individual in the social group, is willing to believe that the flourishing of corporations is preparing society for the acceptance of a future socialistic *régime*. The older "individualists" are apparently maintaining a hopeless struggle against the social tendencies that make it impossible for them to gain a footing in society except through the medium of corporate organizations or in subordination to them. Even the apologists for corporations deplore the elimination from trade and industry of the individual as an efficient unit.² Notwithstanding

¹ "Organized wealth and power have not yet grown wise enough to scent danger before it is upon them. The Eastern section of our country is already in danger, and I have an impression that it does not see this. In its concentration of the wealth of the country and in its ostentatious display of its wealth, in the gradual cultivation of caste, in the tendency to hug its vast riches and in finding means to keep its millions at home, let it behold a danger it will do well to consider in the light of both ancient and modern history.

"If it has any real statesmen, they cannot put their genius and resources to better uses than to formulate some policy which will bring the conflicting elements [of the eastern and western United States] together.

"In 1800 we were a few millions of people and we loved liberty. In 1900 we are nearly a hundred millions of people and we love money. Moreover, individually and collectively, we have a great deal of money. Most of this money is invested in what are called corporations. From a handful of individuals we have become a nation of institutions. The individual counts for less and less, organizations for more and more. It is the idiosyncrasy of the age we live in."—Interview of Henry Watterson, in *New York Journal*, November 29, 1896.

² "How great have been the advantages to our commerce and our country's development from corporate organization no one can say. Have these advantages been to some extent counterbalanced by certain evils? The concentration of wealth in the hands of corporations has had the effect of driving the individual producer out of business. In the early days of our

their vital importance to modern society by reason of their great number and increasing resources, and of the universality of their presence in the several branches of social life, corporations have shared so fully in the complexity of the growth of society during the past century that a clear comprehension of their true relations to it has not been attained. Those who have given them critical consideration have usually begun and ended with an indistinct conception of their nature, even if it be conceded that they have made efforts to provide such a conception as the basis of their study or to attain one as the result of it.¹ Like most other criticism of immature social movements, the criticism of corporations has gone to one or the other of two extremes: it has been largely negative and destructive from a failure to recognize their permanent and enduring elements and to give them due weight, or it has credited to them social elements contributed by other social factors²; the result has been

country's existence many industries were carried on in the towns and villages by skilled workmen who were their own masters, and who were in business for themselves. Tailors, shoemakers, weavers, blacksmiths, tin-smiths, saddlers, and many other manufacturers on a small scale carried on their business for their own account, and were a useful, self-reliant, and manly element in our population. These industries are now to a great extent monopolized by large corporations, and the men who were formerly independent in their business are now represented by salaried workmen. The gradual extinction of this class of men of moderate means who carried on their business for their own account seems to be a distinct loss to the community."—William Jay, "The Corporation in Commerce," chapter viii. in *One Hundred Years of American Commerce*, vol. ii., p. 48.

"[As one of the evil effects of corporate organization] we shall have, in place of the independent business men of to-day, each gaining his livelihood by his success in a wide range of thought and action, a body of clerk-like functionaries, each of whom will do a certain limited kind of work at the command of his superiors."—Charles Francis Adams, "The Place of Corporate Action in Our Civilization," chapter iv. of Shaler's *The United States of America*, vol. ii., p. 197.

¹ Cf. Arthur T. Hadley, *Railroad Transportation*, p. 43.

² No little confusion is caused by the failure to separate the "corporation question" from questions allied to it; it must be borne in mind that it is

unqualified denunciation by one group of critics and unlimited approbation by another. An effort must be made to avoid the two extremes; to attain a conception of corporations that will include all their essential and permanent attributes and exclude such as are not essential or are merely temporary.

Possibly the failure to appreciate the true relations of corporations to society and social progress, that has caused unscientific criticism of them, is also accountable for the condition of the body of law intended for the interpretation and enforcement of their rights and duties.

xxx The principles of the law of corporations, derived chiefly from the seventeenth and eighteenth centuries and formulated by Blackstone in 1758, are in the main the principles still applied, subject to modification by legislatures and courts. Both the modifying agencies have proceeded somewhat blindly but not entirely without wisdom. Legislative bodies, it hardly need be suggested, do not always act consistently; they do not always have policies founded on broad principles; they see a social need and see it distinctly, but they do not always supply it with due regard to the ultimate consequences of the remedy. In dealing with questions relating to corporations they have, in general, had in mind rather the needs of society than the nature of the corporation, the means through which the needs were supplied. The result is a heterogeneous mass of laws from which it would be difficult to say what the legislative conception of a cor-

primarily a question of social form and only secondarily one of social function. Mankind or human energy is the content, the corporation is one of the forms through or within which the human energy becomes human activity. *E. g.*, the corporation question is often carelessly confused with that of the consolidated control of capital or "trusts,"—but the latter comes within the scope of the former only through an enquiry to what extent the corporation by virtue of providing a fit or usual form for the activity of trusts, affects such activity by restricting, expanding or otherwise influencing it.

poration is. The courts, on the other hand, seek a fundamental principle on which to base every decision; they aim at system and consistency. The fault of judicial interpretation of rights and obligations is inflexibility. The anxiety to conform to established principles carries the courts not infrequently beyond the point at which the principles cease to be wholesome. Principles are gradually abandoned, however, and new ones substituted for them, though, unfortunately for system and consistency, interdependent principles relating to the same subject-matter are not changed at the same time. As far as corporation law is concerned, the courts have succeeded in fairly administering justice, but only at the expense of injecting into the system represented by Coke and Blackstone a body of new principles, one at a time, until it has become necessary for the text writers to divide the law of corporations into separate bodies according to the varieties of corporations. It has been virtually conceded by the courts that the older principles of the law of corporations have become inadequate for the interpretation and regulation of their relations to present society, but they have been unable to do more than amend them or partially substitute others for them. The difficulty seems to be fundamental. The conception of a corporation badly needed by critical students of social institutions, is only a little worse needed by the legislatures and courts. Such a conception can hardly be attained otherwise than by a careful historical and statistical study of the past development and present condition of corporations in their relations to the society of which they have heretofore formed and now form a part. The new conception attained, the legislator and judge have a centre about which to group a system of laws and rules for their creation, control and protection.

The condition of the literary material for a study of corporations is unfortunately such as to impose on the

student and investigator an unusual degree of self-reliance. The historical and statistical ¹ material is scanty and unreliable, while the work of interpretation already done is of little service. Less enlightenment on the nature and history of corporations than one would be inclined to expect is given by jurists, either in legal treatises, opinions or judicial decisions, though they alone, with the exception of recent sociologists, have essayed to present a systematic treatment of the subject.² When new social forces make their appearance and begin to be expressed in new social relations, the jurist endeavors to explain and control them by the application of legal principles already established in analogous social relations rather than by the application of principles that might be discovered through scientific study in the workings of the new forces.³ For most practical pur-

¹ Dr. Roland P. Falkner, of the University of Pennsylvania, deserves much credit for his efforts to collect and tabulate some of the statistics of modern private corporations. Some of the results of his work are found in a very instructive paper on the "Statistics of Private Corporations" in the *Publications of the American Statistical Association*, June, 1890, p. 50.

² "American lawyers have written more voluminously, not to say more diffusely, on corporation law than those of any other country; but they have usually elected to treat the subject from a strictly legal standpoint. Their works have been planned merely to serve busy attorneys."—A. G. Warner, *Annals of American Academy of Political and Social Science*, vol. ii., p. 551 (January, 1892). Review of W. W. Cook's *The Corporation Problem*.

³ When sleeping-cars first came into extensive use, the first efforts of the courts were to construe the liabilities of the companies operating them as those of either common carriers or inn-keepers, but it was found later that the legal rules relating to those two classes of persons were inapplicable to sleeping-car companies; now "according to the weight of authority, the liability of the sleeping-car company is neither that of a common carrier nor of an inn-keeper."—*American and English Encyclopædia of Law*, *sub verbo* "Sleeping-cars."

It is believed that the chief difficulty in legislative and judicial control of corporations at present is due to the effort to apply to them legal principles elaborated in a system of law founded on individual social units instead of modifying the existing system so as to make its principles applicable to ag-

poses, the lawyer must assume that society is not subject to historical development, though such an attitude, while it conduces to the stability and conservation of social institutions, requires for a study of institutions the necessity of exercising extreme caution in the use of technical legal material. Yet, without pretending to discard the established legal principles, legislatures and courts, as already suggested, have made so many modifications of the law of corporations that the principles formulated by Coke and Blackstone have become quite inadequate as a foundation for the modern law of corporations¹; consequently the later legal writers that have undertaken to expound the law of private corporations have struck at the very root of the older law of corporations by discarding, in whole or in part, the cardinal theory of "artificial personality,"² though for very good reasons they have not been followed by the expounders of the law of public corporations.³

gregate social units; the theory of "artificial personality," though harmless when applied with due limitations, has been the source of much confusion in legislation and legal decisions on questions relating to corporations.

¹ "The demand for the use of corporate powers in combining the capital and energy required to conduct . . . large operations, is so imperative, that by the tendency of the courts to meet the requirements of . . . public necessities, the law of corporations has been so modified, liberalized, and enlarged, as to constitute a branch of jurisprudence, with a code of its own, due mainly to very recent times. To attempt, therefore, to define a corporation or limit its powers by the rules which prevailed when they were rarely created for any other than municipal purposes, and generally by royal charter, is impossible in this country and at this time."—Justice Miller, in *Liverpool & London Life and Fire Insurance Company vs. Commonwealth of Massachusetts*, 10 Wallace, 566.

² Morawetz on *Private Corporations*, § 1 (2d edition), Taylor on *Private Corporations*, § 22. W. W. Cook, in his work on *Stock and Stockholders* (§1), seems to adhere to the conception with modifications, as does also J. L. Lowell in his work on *Transfers of Stock*. See article on "The Legal Idea of a Corporation," in *American Law Review*, vol. xix., pp. 114-116.

³ "Up to the present century, the fiction [of an artificial person] was adequate for the regulation of corporate affairs."—Taylor, *Law of Private Corporations*, § 22. See preceding note.

Writers of political history, it must be admitted, cast little light on the subject of corporations. Constitutional history, as written, may be relied on for a knowledge of the form or framework of the state, and popular history for a knowledge of national activity. Corporations, however, have constituted, for the most part, the framework of society subordinate to that of the state and have been largely overlooked or ignored by both classes of historians.¹ The results achieved by recent sociologists are more serviceable. In recognizing that all men and all combinations of men have their peculiar and appropriate social functions exercised in relations and sets of relations subject to constant change and development, they have been led to a comprehensive view of the formal or institutional side of society and have avoided the narrowness of both jurists and historians. But in their efforts to classify and systematize social forms and functions, it is feared that they have not infrequently chosen objectionable bases of classification and have somewhat arbitrarily exaggerated or disparaged particular attributes of institutions to make them fit into their system—tendencies for which more extended historical and statistical study of particular institutions must act as a corrective.

A study of corporations has primarily for its subject-matter a particular class of subordinate social forms.² Like all other social forms, corporations are subject to modification: (1) internally, by the influence of their con-

¹Even Stubbs, in his monumental *Constitutional History of England*, views the English municipalities at the end of the Middle Ages almost solely as a part of the central administration machinery of the state. Mrs. J. R. Green, in *Town Life in the Fifteenth Century*, has given an adequate treatment of one phase of corporate life. Gross's *Gild Merchant* is the only complete study of any one class of corporations.

²This particular characteristic has been appreciated by Franklin H. Giddings in his *Principles of Sociology*, in which he has very appropriately assigned a discussion of corporations to the chapter on "The Social Constitution" (Book II., chapter iv.).

tent, the social activity exercised within them, and (2) externally, by the influence of other social forms and other social activity. (1) Social forms and social functions are intimately interdependent. Lack of adaptation of either to the other must result in modifications in one or the other or in both. (a) If the form, whether originally or as the result of subsequent more or less arbitrary modification, is unsuitable for a particular function, it must be altered to conform to the character of the function, or perish,—unless it be adapted or adaptable to some other social function to which it may be readily transferred. (b) If a particular function may not be exercised, within a form provided for it, it must be either wholly unexercised, only partly exercised or fitted into another form. (2) Social forms have also a close relation to their environment, made even more intimate by the concurrent close relation of their functions to the same environment. (a) One social form may be superseded by another, may absorb it or may anticipate either result by internal modification; even when entirely efficient for its function, a form may be swept away by a public opinion that finds in it a want of harmony with some accepted type of social forms. (b) A form in being expanded to include new social functions, either in addition to or in place of those already included in it, is likely to undergo modification in the process. (c) A form may be indirectly influenced through changes in its own function caused by changes in other forms and functions with which its own comes in contact. } Corporations must be studied, then, not merely in their own internal structure,—though their peculiarity of form is their distinguishing feature,—but in the relations of their structures to the functions exercised within them and in their relations to their formal and functional environment. Corporate forms and functions and the environment by which they are influenced are all products of time. They are all meaningless except

as they register past experience or predict future social growth, stagnation or decay. They must therefore be subjected to historical treatment.)

The purpose of the present work, then, is to trace the historical development of corporate forms, and, concurrently, of the social functions that have successively been performed within them. An effort will be made to lay a foundation for determining the character of the social functions that have seemed by the test of experience to be best fitted for exercise by corporations. The various relations sustained by them to other social forms in which entire societies have been organized, the state and church, will be considered. As far as possible, the effects on corporate forms of the relations of corporate activity to the general activity of society will be observed. For convenience of treatment, the subject of corporations will be divided into two parts on the basis of their relations to modern social life; those that have been of service to mankind under conditions prevalent in the past, but now obsolete or only exceptional, will be treated in the present volume; those that are part of our present social order will be left for future treatment (except as to the topic of ecclesiastical corporations). The study will be restricted to English and American corporations, because they have been more important than others, and the development of corporate life in England and the United States has been more orderly and complete; almost all that is worth knowing about corporations may be learned from English and American experience. The chief importance of Roman corporations lies in the body of Roman law amassed in their interpretation and regulation and afterwards incorporated almost bodily into the English system of law. However, for purposes of illustration, the history of corporations of other countries will be occasionally resorted to.

II

THE NATURE OF CORPORATIONS

ALL human activity has its social as well as its individual aspect. Man is so essentially a "social animal" that his every act, however insignificant, has its effect, directly or indirectly, on his fellows. All men sustain social relations to all other men. The effect of the social relations—social growth, stagnation, or decay—is a product of two factors, the content (function) of the human activity and the organization (form) within which it is exerted. The existence of each factor implies the existence of the other. Social functions are exercised only through the machinery of social forms; yet social forms, though indispensable to the exercise of social functions, are continually suffering modification to meet the demands of new or altered social functions. In general, function and form—each depends upon and reacts on the other; progress and retrogression in each are reflected in some degree in the condition of the other. The corporation is a group of natural persons embodied in a certain class of the many forms of organization within or through which certain classes of social functions are exercised. The delimitations of form and function will appear in the following review of the several generic attributes of the corporation:¹

1. *Associate Activity.*—The corporate form is one within whose limits associate, as distinguished from individual, activity¹ is exercised, and comprehends both the

¹The use of corporations for associated social activity has been more generally recognized than any other feature of them; unfortunately most

interrelations of the associated members and their relations with other organs of society.) The early distinction of corporations as aggregate or sole is manifestly illogical and has been almost entirely abandoned in practice.¹ There are probably no corporations sole in the United States; with the possible exception of church parsons in Massachusetts.² If there are any, their powers and duties may be fully interpreted by the laws of trust and trusteeship. It is significant that the later text-books on corporations give no space to the subject of the corporation sole. The inclusion of certain individuals in a classification of corporations was undoubtedly considered necessary on account of the presence in some public officers (or offices) of attributes common to them and to corporations, such as the legal limitation of activity (found in all public offices) or of limited control over property held for public purposes. From another point of view, the extended use of the term is explained by a particular application of the theory of artificial personality—a legal exaltation of the purpose for which property is held or powers exercised above the natural personality

writers have not succeeded in discovering, or at least have failed to consider, any other feature. *E. g.*, Professor Giddings, in his *Principles of Sociology* (p. 187), recognizes corporations as forms of association, but discusses no other quality of them.

¹ "The idea of a corporation sole has been claimed as peculiar to English law, but the novelty consists only in the name; and it has been justly remarked that, 'as so little of the law of corporations in general applies to corporations sole, it might have been better to have given them some other denomination.'"—Dr. Wooddeson, *Vinerian Lectures*, vol. i., pp. 471, 472. "There are very few points of corporation law applicable to a corporation sole."—Kent, *Commentaries*, vol. ii., p. 273.

² "The number of corporations sole in the United States must be very small indeed. It is possible that the statutes of some states vesting the property of the Roman Catholic church in the bishop and his successors may have the effect to make him a corporation sole; and some public officers have corporate powers for the purposes of holding property and of suing and being sued."—Blackstone, *Commentaries*, Book I., p. 468, note of editor (Cooley).

of the person or persons holding the one or exercising the others.¹

Again, while the functions of corporations aggregate and corporations sole may be the same, the latter lack the continuity of existence that is so prominent a characteristic of the former. When it is said that the king never dies and that he thus resembles a corporation, the actual continuous group life of the latter is confused with the continuity of existence of the public office not possessed by its successive incumbents.² Groups may, but individuals may not, have continuous existence; social functions of both groups and individuals may endure continuously. Holding property for particular public purposes with incapacity to use it for other purposes or to alienate it does not alone constitute the holder a corporation, though it is one of the attributes of a corporation that its use of its property is limited by the terms of the charter to which it owes its creation and in accordance

¹ This idea is elaborated fully in Pollock and Maitland's *History of English Law*, vol. i., pp. 469-495.

² "The law has wisely ordained that the parson, *quaterne* parson, shall never die, any more than the King; by making him and his successors a corporation. By this means all the original rights of the parsonage are preserved entire to the successor; for the present incumbent, and his predecessor who lived seven centuries ago, are in law one and the same person; and what was given to the one was given to the other also."—Blackstone, *Commentaries*, Book I., cap. 18. This is verbal jugglery.

"It is true the Common Lawyers of England have been used to speak of Parsons, Vicars and even Wardens of Parish Churches, as Corporate-bodies. Sir Thomas Littleton speaketh after that manner. But I do apprehend, that the reason thereof is, because Parsons, Vicars, or Church-wardens, have a Perpetual succession, like as Politick bodies have; and therefore, that this way of speaking of them as of corporate-bodies is founded rather upon Resemblance than Reality."—Madox, *Firma Burgi*, p. 47. See also reference to the case of *Overseers vs. Sears*, *infra*, p. 23, note.

"One general figurative notion of incorporeity hath produced many fictions."—Madox, as quoted by Gross, *Gild Merchant*, vol. i., p. 104, note. The reference there given is "Addit. MS., Brit. Mus., 4531, fol. 122."

with whose terms it must exercise its activity. So-called corporations sole differ from true corporations, not in function but in form; the former lack the internal social structure of the latter.¹

2. *Creation by the State.* The corporate form or sum of peculiar relations subsisting between the members of the corporate group and between them and other members of society is created by the state, or, after spontaneous origin and maintenance by the force of custom, is approved with the same legal effect as if originally created by it.) Neither the group nor its functions, but only the internal and external personal and group relations under or within which the group exercises its functions are created by the state.) The progress of civilization demands an increasing exercise of associate activity, but not necessarily in the corporate form. As compared with the state, a primary, sovereign group, the corporation is a secondary, derivative, subordinate group. Likewise ecclesiastical corporations, under the earlier conception of the church as society primarily organized on its religious side (whether or not coextensive with the state) were sub-groups of the church, deriving from it their internal and external social relations. To be sure, all social activity, whether of individuals or groups, is limited and conditioned by the system of law under which it is exercised, for the state is itself, like the corporation, a group (though superior to all others), acting through or within certain self-imposed forms; but the corporate form brings to the members of the group in possession of it internal and external relations different from the usual and regular social relations imposed on individuals by the existing system of law and artificial and exceptional as compared with them.² Not only is the corporate form

¹ See discussion of functions of corporations, *infra*, p. 31.

² Of course, whether given legal relations are regular or exceptional depends on the nature of the system of law under which the relations are

artificial and exceptional, but the field of group functional activity is narrowed or widened, or otherwise artificially and exceptionally created or modified, by the act of the state. Nor need the corporate relations owe their existence to a direct and special creative act of the state; they may be created through any subordinate agency of the state that the state may see fit to select, or by virtue of "general incorporation" laws, which have the effect of causing the erection of the peculiar legal relations on the performance of certain preliminary acts by incorporators.¹ Some fields of social activity, such as the construction and operation of railways² and the formation

recognized or created and enforced; some systems, such as that of early Rome, have been based on a composite unit, as the family or some other group; others, such as the Imperial Roman law and the (English and American) law since the destruction of feudalism, have been based on the simple unit, the individual. The members of a corporation act not as units but as parts of a composite unit, and their social relations are to that extent exceptional as compared with the regular social relations of individuals regarded as social units. It is sometimes prophesied with a considerable degree of assurance (as in the quotation in the note on page 32, *infra*) that society is to attain in the near future a stage of development in which the social unit will be aggregate or composite instead of individual, as at present, and that the corporation is the institution through which socialism, in a more or less modified form is to be made effective. Unfortunately for such views, the historical development of corporations has not as yet afforded them much support. If the corporate form were always used as one might expect from a consideration of its adaptability, it might serve as a stepping-stone to socialism, but as a form of social activity it has been perverted to highly individualistic uses, and has actually produced more exaggerated individualism. The use of corporations has tended to result, not in co-operative commonwealths, but in trusts. There is much more reason to expect that if socialism comes at all it will derive its organization from above, not from below—from the subdivisions of the state and not from corporations—in other words, it is more likely to be state socialism than co-operative socialism.

¹ Blackstone, *Commentaries*, Bk. I., pp. 473-474.

² This is a broad statement of the fact as to railways. The exercise of the right of eminent domain is delegated to corporations alone. Some exceptional circumstances might enable individuals to construct and operate railways, but, speaking in general terms, the function is restricted to

and management of banks, may by modern law be occupied only by groups of persons organized in the corporate form. Whatever may be the purpose of granting special group forms or of contracting or expanding the field of group-activity, the act is always that of the supreme social group organized as the state or church. This attribute of corporations has always been fully recognized by courts of law, and the enforcement of the rule of strict construction of corporate powers and acts has been consistent with the recognition of it.¹

3. *Voluntary Inception—Compulsory Endurance.* The assumption by a group of the corporate form and the acceptance by individuals of membership in the group are voluntary, as distinguished from the compulsory political status of citizens in the state and its subdivisions.² But

corporations. When railroads are sold at forced sale under decrees of foreclosure or on executions, it is held that an individual may purchase and operate the property, but that he may not succeed to the corporate franchise. Opinions in some cases seem to contemplate only a temporary operation of the property by the individual purchaser. At all events, individual ownership and operation of railways are regarded as justifiable only under extraordinary circumstances and when absolutely necessary to the attainment of justice.

¹ Beach on Public Corporations, i., 92, and cases cited. Dillon on Municipal Corporations, i., § 91. Sedgwick on Construction of Statutory and Constitutional Law, 338. *American and English Encyclopædia of Law, sub verbo* "Corporation."

² It may be objected that the consent of the citizens of a municipality is not necessary to its incorporation, and that acceptance by them of a municipal charter is not necessary to make its provisions operative. Though that is now the well-settled rule with relation to public corporations, it is so generally regarded as repulsive to the spirit of English and American political institutions that some preliminary act in the nature of consent or acceptance on the part of the prospective citizens of the municipality is required before the law of incorporation is permitted to take effect. It is true, in general, that municipalities have exhibited a strong and increasing tendency to cease to be corporations and to become more truly sub-governmental administrative bodies. This tendency has been expressed in the enactment of general incorporation laws, the more particular classification of municipalities, the increased interference by legislatures in the govern-

this is not equivalent to saying that persons not members of the group may be voluntarily exempt from the external effects of the organization and activity of corporate groups. One must be a citizen of some state, though not necessarily a member of any corporation; in either case, however, his conduct must conform to the conditions imposed by the organized activity of the state, its subordinate institutions and the autonomous corporations created by it. There is a particular sense in which even the state organization may be described as voluntary; even if imposed by external force, it may be said to depend for its continued existence on the consent of the subjects upon whom it is imposed; but a society must have a political organization of some kind,—the “right of the state to be” has been placed beyond question. Once organized, the state may coercively organize sub-groups of its citizens for the exercise in detail of the functions of government, but such coercively organized groups are not true corporations, though the name is often applied to them; legal writers have well described them as quasi-corporations, because they have many of the attributes of corporations, though lacking in the essential elements of voluntary inception and autonomy.¹ After the corporate form has been assumed by a group, it is compulsory, from the side of the state, upon all its members until forfeited for misuser or non-user or

ment of municipalities, and the modification of the doctrine of consent to be incorporated. Municipal self-government is being rapidly transformed into a mere determination within narrower limits of the means of executing laws imposed by state governments. The decadence of city government in England in the seventeenth and eighteenth centuries was evidenced by the multiplication of local commissions acting under the supervision of the central government. American cities seem to be passing at present through a similar phase of development,—which indicates, as far as the present study is concerned, a decadence of corporate municipal life and a corresponding expansion of state government.

¹ See preceding note.

regularly put aside in the manner provided by the state at the time of its creation or afterwards; from the side of the corporation, however, the corporate form may not be assumed or retained against the sovereign will of the state. The doctrine that "a charter is a contract" is vicious; the conception of a bargain between a state and a group of its citizens is illogical; the only final guaranty of the protection of rights and of the performance of duties is a sound social sentiment. The prevalence of corporations is therefore characteristic of a state of society in which individual (and not state) initiative is relied on and individual responsibility is expected to serve as a regulating force. In rapidly developing communities the individual initiative has often been unduly encouraged by making the maintenance of corporate relations (once assumed) less compulsory. Perpetual-lived corporations are usually born in epochs of social expansion; under settled social conditions, corporations having a definite and shorter term of life are usually created.

4. *Autonomy, Self-Sufficiency, Self-Renovation.*—The group of members within the corporation is (a) autonomous, (b) self-sufficient and (c) self-renewing.

(a) Within the limits of the particular corporate form and function imposed or granted by the state, the corporate group controls the conditions (of both form and function) of its own activity without direction, interference or revision by other persons or groups of persons, including the state itself. In this respect the true cor-

¹ It is not necessary to assume that the state has made a contract with a corporation, the terms of which are expressed in the charter granted, in order to insure autonomy or stability of corporate life. It is entirely a question of public sentiment. In no other country could corporate powers and duties be as easily modified or destroyed by law as in England, for Parliament is supreme; but the social sentiment in favor of "vested interests" is so strong that English corporations have always enjoyed an exceptional degree of independence. Rarely have corporations been deprived by Parliament of their powers, even after long-continued misuse or abuse

poration is distinguished from purely administrative or subgovernmental bodies, which possess and exercise only enough discretion to execute properly duties for the most part directed, controlled or revised by superior social groups. Thus the autonomy (and thereby the corporate character) of American municipalities is greatly decreased by the interference of state governments in their local affairs, by frequent modifications of their charters, the creation of state commissions for local purposes, and the almost excessive use of the writs of injunction and mandamus by the courts. Though the courts theoretically recognize the element of autonomy by refusing to compel by mandamus the performance of other than purely ministerial acts or to prevent by injunction a reasonable exercise of a corporation's powers within the terms of its charter, the present tendency of legislation and judicial interpretation is to lengthen the category of ministerial acts and to interpret the "reasonable" more strictly. The limits of municipal activity are being narrowed, though the actual volume of activity within the narrower limits may be increasing. From the standpoint of historical social development, this characteristic of corporate relations has been most important; it is a proposition not difficult to establish that the early stages of nearly all the movements in the direction of what is comprehended in "personal liberty" have been organized in the corporate form.¹

of them, without being provided a liberal pecuniary compensation for them; yet no contract relations between England and the corporation could be considered to have existed.

¹ See Mrs. J. R. Green's *Town Life in the Fifteenth Century*, vol. II., pp. 437-448, for the part played in the movement by mediæval towns in England. See also *The Genesis of a Written Constitution*, by Wm. C. Morey, in the *Annals of the American Academy of Political and Social Science*, April, 1891, vol. I., p. 529 *et seq.*, for the connection between the organic structure of the English trading and colonial companies and the constitutions of the United States and several States.

(b) During the period of existence granted to a corporation by the terms of its charter, its general powers must be sufficient to assure its existence and maintenance, and the ability to effectively exercise the particular powers granted it and the duties imposed upon it, independently of external social agents, except in so far as all members of society are dependent upon their social environment. Such powers, if not expressly granted, are uniformly held by the courts to have been granted by implication, some being considered as of the essence of the corporate organization itself and others as incidentally necessary to the exercise of the particular activity of the corporation described by its charter. For example, if a corporation should be permitted to elect officers necessary to perform its functions only when directed by some external agent so to do, it would not be self-sufficient; it might actually cease to exercise its functions for want of the necessary official organs through which to act; such a body would be merely an abortive, not a true corporation. In 1684, Charles II., by the threatened use of the writ of *quo warranto*, compelled the London Livery Companies to surrender their charters and accept in place of them new charters in which it was provided by a special clause that the wardens' and clerks' names were first to be presented to the King for his approval, and if rejected, that the courts of assistants were to elect others, and so on, from time to time, until his Majesty should be satisfied, any election contrary to such provisions to be void; the King also reserved the power of removing any warden, assistant or clerk; the wardens and commonalty were to be subject to the lord mayor and court of aldermen of the City of London (themselves to be appointed by the Crown), who were to approve of all persons admitted to the clothing or livery.¹ The exaction of these conces-

¹ Herbert, *History of the Twelve Great Livery Companies of London*, vol. i., p. 218.

sions by Charles II. and the attempt to enforce them by James II. were readily recognized as tyranny, and had much to do with the expulsion of the Stuarts and the Revolution of 1688.

(c) A corporate group without power to renew its membership during the term of existence granted to it in its charter might cease to exist and thus fail of its purposes for want of members. The existence of a group at all implies a necessity (real or assumed) of plurality of persons for the due performance of some social function; if there were no such necessity, there would be no group. If by the grace of the state the group become a corporation by the assumption of a peculiar form, its character as a group does not cease to be necessary for the exercise of its social functions. The diminution of a very large number by the loss of even a single member might, in an extreme case, so impair the group (as such) as to make it inefficient for its work. The purpose of conferring the corporate form, however, is not to destroy the character of the group as such, but to make it more efficient by providing it with a form appropriate for its peculiar activity. Failure to provide adequate means for the renewal of a corporation's membership, therefore, would be inconsistent with the original purpose of conferring the corporate form. If at the same time the necessity of autonomy and self-sufficiency be given due weight, the means of renewal must be within the group itself,¹—it must be self-

¹ In *The Overseers of the Poor of the City of Boston vs. David Sears et ux.* (22 Pickering, 122) it was contended by counsel that "the corporation [Overseers etc.] thus created is more analogous to a sole than to an aggregate corporation. The two kinds run into each other and the demandants [Overseers etc.] are to be regarded as a sole corporation, or a quasi sole corporation, with some of the incidents of an aggregate corporation. It is a necessary and inseparable incident of an aggregate corporation that it have the power of perpetuating itself by choice of members. Here the corporators have no such power, but they are chosen by the inhabitants of Boston; and they have a civil death annually, as the sole corporation dies a natural death." See page 15, *supra*.

renewal. Thus it is an established principle that the loss by a corporation of an "integral part," in the absence of power to supply it, works its dissolution. It has also been held that when no provision is made in a charter for the filling of future vacancies, the power to do so by co-operation is conferred by implication.

[The three attributes here considered under one head (because each involves and implies the other) are in some cases very difficult to identify.] They are all, however, found developed in some degree in every corporation, as well as in many bodies not usually regarded as corporations. When they are not highly developed, the corporation proper is not easily distinguished from the purely administrative body; indeed, it must be admitted that a critical analysis of most so-called quasi-corporations would reveal in them the presence of the three attributes. The question is one of degree of development; the corporation is in distinct, effective and clearly perceptible possession of them; the purely administrative body has them indistinct, rudimentary and almost imperceptible, and ordinarily depends on the state for complementary activity to enable it to exercise its functions. The necessity of autonomy and self-sufficiency is the basis of the doctrine enforced by the courts (as an exception to the general rule of strict construction of corporate grants and powers) that such a construction, if possible, shall be applied in the interpretation of corporate powers and duties as shall permit the accomplishment by the corporation of the original purpose of its creation.¹

5. *Compulsory Unity.* [The creation of a corporation contemplates that in all its relations with other organs of society it shall act and be acted upon as a unit.] Accordingly it is provided by its charter (supplemented by its

¹ Beach on Public Corporations, i., 93, and cases cited. Dillon on Municipal Corporations, i., § 87, and cases cited. Field on Private Corporations, 66, 67. Taylor on Private Corporations, 121.

by-laws) with a means of determining the group-will of its members, with agencies through which the group-will shall be executed, and with agencies through which other social organs shall maintain their relations with it. In the element of compulsory unity, corporations are distinguished from most other associate bodies, and resemble most nearly the state itself. Blackstone very aptly called them "little republics," though he would have been more faithful to history if he had called republics "big corporations." This is one of the sources of the theory of "artificial personality"; the corporation is said to have a common name, and to be, "for certain purposes, considered as a natural person," "vested by the policy of the law with the capacity of acting in several respects as an individual."¹ There is nothing harmful in the recognition by the state in its system of law that a sub-group of it has distinct characteristics like men, if the fact that it is still a group be not lost to view. ¶ Though unified in action, the corporation is none the less a group; on the contrary, its unity of action preserves it as a group; if each member persisted in following his own will in preference to finding a common ground on which a group-will might stand, the group would not act as such, but would be inactive, and lawyers would readily determine it liable to forfeit its charter for non-user. ¶ The fact that the common group-will may not coincide completely with the will of any one member ought not to exempt the members from responsibility for the effects of its execution. ¶ It is purely a legal fiction that a corporation is an "artificial person,"—"a conception, which, if it amounts to anything, is but a stumbling-block in the advance of corporation law towards the discrimination of the real rights of actual men and women."² ¶ The other source of

¹ Angell and Amso on Corporations, pages 19-20.

² Kyd on Corporations, page 13.

³ Taylor on Private Corporations, § 51.

the theory is formed in the nature of the functional activity of the corporation, which will be considered below.¹

It must be admitted, however, that the theory has been discredited in practice, in the rejection or modification of so many of the principles founded on it that it is quite unnecessary to refer to them in detail. One such principle has been the source of an unusual amount of confusion; it is a logical deduction from it that the members of a corporation have no right in debts due to it and are not liable for debts owing by it,—“*si quid universitati debetur, singulis non debetur; nec, quod debet universitas, singuli debent.*” The principle has been so extensively applied that the corporate form has come to be used for the advantage of the limited liability afforded by it more than for any other purpose.² Yet there is nothing in the corporate form itself that affords a justification for the presence of this predominant element; though some social functions may be regarded as to such an extent public in character as to justify the setting a limit to the pecuniary risk of those who perform them, regardless of the social form (whether corporate or not) in which they are organized. The pernicious movement has decreased the personal responsibility on which the integrity of democratic institutions depends, and has introduced into both investments and social services a dangerous element of insecurity. Limited liability of members was not a feature of early corporate life in England, and its undue prevalence in this century has been due to an overestimation of the importance of national internal development.³ More

¹ *Infra*, pages 27, 29.

↓ ² “The distinctive feature of the modern trading corporation is the limited liability of its members.”—A. T. Hadley, *Railroad Transportation*, p. 43.

↓ ³ The sentiment is fairly expressed in the following words: “It is a well-known fact that many of the enterprises which have greatly developed the resources of the country, and which have been of great benefit to society, would never have been undertaken without corporate organizations.

settled economic conditions have already resulted in some improvement, and the element of personal responsibility is gradually pushing its way back into the management of corporations so far that limited liability, instead of being an advantage, is often regarded by promoters and investors as a positive detriment.

6. *Motive in Private Interest.*—A corporation is composed of persons having a private or particular (or local), not merely public or general, interest in the subject-matter of the group-activity, whether it be political, social (in the narrower sense), religious or economic. This is partly deducible from the voluntary inception of corporate relations, for if such relations are voluntary in their inception, only those will desire to assume them who have the satisfaction of a private interest as their motive. A county is not regarded as a corporation proper, but only as a quasi-corporation; what the citizens of a county do as such, they do as members of the inclusive society of the state, and their acts are limited (theoretically, at least) to such as it is necessary for them to do as members of the general society of the state, and do not include such as they have merely a particular, private or local interest in doing. While the same may be said of the citizens of a municipality, there is a field of activity in which they are considered to be actuated by a particular, private or local interest not shared by society in general. Lower in the scale, members of a so-called private corporation, such as one for purposes of trade, are actuated almost entirely by private interest. In some cases, however, associations upon which a compulsory organization has been imposed

No new enterprise is a cinch, it is more or less uncertain and speculative, and where it involves large expenditures of capital, unless the men who undertake it can know the limit of their liability, it will remain undeveloped.”—“Suggestions for Amendment of the Laws Governing Corporations in the State of Michigan,” by Jay P. Lee, in *Publications of the Michigan Political Science Association*, No. 3, pp. 74, 75.

by the state have become corporations by such a perverted use of the machinery of the imposed organization as to make it a fit form for the exercise of activity dictated by the private interests of the associated persons; such was the origin of the old English corporation of the Merchants of the Staple or Staplers. But "public" and "private" are relative terms. What is a public and what a private interest is determined only by the stage of development that has been attained by a particular society. In a rapidly growing community, a body of citizens so influenced by patriotic sentiment as to establish a business enterprise largely for the purpose of "booming" their country may be said to be actuated by something more than mere private interest; while a similar venture, under mature and settled social conditions, would have little of the public element in it. Public and private, social and individual, interests are always found in combination, and sometimes so blended and confused that it is extremely difficult to determine which is predominant. Legislatures and courts of law, in the application of the principle, have often been driven to assume apparently inconsistent attitudes towards very similar states of facts, though the correctness of the principle has not been denied. The principle must be adhered to, even if in many cases so hard to apply. In the corporation proper, then, private and particular interest is permitted to seek its own satisfaction, and public and general interest, if at all, will be consulted from the side of the corporation, only incidentally, collaterally or secondarily, as set forth in the paragraph following.

7. *Functions Public and Appropriate for Associate Activity.*—The social functions performed by corporations have had two enduring qualities: They have been (a) such as were considered under succeeding sets of social conditions conducive to the welfare of the public and of society in general rather than to the particular welfare of the per-

sons performing them, and (b) such as were more advantageously performed by associate than by individual activity. The first has reference to the relations of the activity of the corporate group to the society of which it is a part; the second, to the relations of the group to the conditions under which its activity must be exercised. The standpoint of the first is society in general; of the second, the corporate group.

(a) What now appears at first blush to be a too restricted view of corporate functions would probably have been accepted as sufficiently comprehensive before the beginning of the nineteenth century. The unprecedented growth of private corporations since 1830 seems to discredit the statement made, but it is believed that even private corporations find justification for their existence in the general opinion that public welfare is materially promoted by the more facile exercise in corporate form of social functions whose exercise is prompted by the pursuit of private interest.¹ Nor is the limitation inconsistent with the statement made in paragraph six above. The corporate form has always been intended and used to promote public welfare through private interest by affording to private interest a social mechanism through which adequately and effectually to express itself in social activity. The almost insuperable difficulty in the use of the corporate form has been to reconcile the private motive and public purpose of the activity exercised within it. But the difficulty is due not so much to the corporate form itself as to the character of the activity; indeed, it is urged with much force that the use of

¹ See note on page 26, *supra*.

"The purpose in making all corporations is the accomplishment of some public good. Hence, the division into public and private has a tendency to confuse and lead to error in investigation, for unless the public are to be benefited, it is no more lawful to confer exclusive rights and privileges upon an artificial body than upon a private citizen."—Mills *vs.* Williams, 11 Iredell's (N. C.) 558.

the corporate form has a tendency to ameliorate the unfortunate social conditions incidental to some kinds of social activity.¹ The class of social evils usually included in discussions of the "railway problem" are evils due more to modern methods of transportation under modern social conditions than to the peculiar legal form in which the men engaged in transportation are organized. Ownership and operation of railways by individuals would entail greater evils than their ownership and operation by corporations.²

This attribute of corporate functions is another source of the pernicious legal theory of "artificial personality." The function performed by a person is personified, and the sum of rights and duties involved in the performance of the function is separated in abstract thought and law from the succession of natural persons or groups of persons in whom they are reposed: Then the persons or groups are known to the law as corporations to the extent of their connection with the social functions in view. Hence the division of corporations into aggregate and sole. The early English parson was the *persona ecclesiæ*; the church was personified in him; the land, of which he

¹ "The corporation is the ally, the agent, the representative of plutocracy Plutocracy has appeared in a new guise,—a new coat of mail,—the corporation. The struggle of democracy against plutocracy . . . will be between democracy and the corporation. The people are beginning to recognize their old plutocratic foe in its new corporate form." (W. W. Cook, *The Corporation Problem*, p. 249.) "Plutocracy in the form of the individual is largely beyond the reach of legislatures and the law. But plutocracy in the form of the corporation is open to attack. It can be regulated, restricted, and annihilated. Plutocracy acting through corporations is obliged to be cautious and conservative. . . . The plutocrat gives bonds to keep the peace when he acts through the corporation." (*Ibid.*, pp. 252, 253.) "It is better to have the large corporation than to have the trust."—*Ibid.*, p. 243.

² Cf. A. T. Hadley, "Railroad Transportation," p. 48. Cf. also R. T. Ely, "The Future of Corporations," *Harper's Magazine*, vol. lxxv, pp. 260, 261, (July, 1887).

³ See page 25, *supra*.

had a limited use, was in reality the property of the church, or the property of society devoted to particular religious services performed by the parson.¹

[The private corporation pure and simple is a product of social, political and industrial conditions largely peculiar to the nineteenth century, of which democracy and individualism are the foundations. Repugnance to class distinctions and the belief in the equality of men combined with the tendency to restrict the area of state activity at the end of the eighteenth century opposed the creation of corporations because they involved class privileges, inequality and the limitation of individual activity; powers that could not be safely (as a matter of theory) left to the exercise of the state could with no greater degree of safety be reposed in corporations. But if certain functions were dangerous to the liberty of the individual when exercised by the state, they were none the less necessary to be exercised, and the nearer they were to the individual, the less dangerous they seemed to be; accordingly corporations became more numerous in the early part of the present century. But again, inconsistently enough, class distinctions must not be maintained and the assumption of the corporate form and the exercise of corporate powers must be free to all; general incorporation laws were accordingly justified by social theories. The distinction between public and private functions is never easy to determine and it is not made easier by democratic theories of society and the state; all functions have tended to reach the same level, and "incorporation for any lawful purpose" has been freely permitted to all.] A false definition of public and private functions has been the cause of the confusion. The "private corporation" is a contradiction in terms, and has no place in a sound organization of society. The present

¹ See Pallock & Mailland's *History of English Law*, vol. i., pp. 483-486.

tendency in the business world (as well as in the courts) is to distinguish more clearly between the various purposes for which corporations are organized and to estimate the responsibility of the organized persons accordingly.

(b) The importance of the second attribute of corporate functions has been only gradually developed and appreciated in the progress of society. Before the present century, even partnerships were unusual and, when they existed, were usually composed of members of the same family. The object of mediæval corporations was primarily to provide and limit the conditions of individual activity and only secondarily to afford a means of expression for unified associate activity. It is only in the nineteenth century that the latter object has been magnified (concurrently with a depreciation of the former) to such a degree as seriously to menace the stability and permanence of the individual as a social unit.¹

The principle of association may make itself manifest in two degrees: (a) in the imposition by a group of the conditions of activity on its individual members and (b) in the absorption by the group as a unit of the activity of its members. (a) The activity in the first case is so closely appropriate for associated persons that it will not be discussed. (b) Whether absorption by a group of the activity represented by its membership is advantageous

¹ "The modern form of corporation prevailed because it was found to be the best form of ownership for the large permanent investments under concentrated management which are required in modern industry."—A. T. Hadley, *Railroad Transportation*, p. 46.

"As John Stuart Mill says, [the union of capitalists and laborers] must be brought about by a development of the partnership principle. No one . . . can tell exactly what form this will take, but some things seem already clear. Corporations will play an important part in this development, as they gradually become more democratic in their tendencies. Corporations and co-operative enterprises will become more and more nearly assimilated until they can scarcely be distinguished."—Richard T. Ely, "The Future of Corporations," *Harper's Magazine*, vol. lxxv., p. 260 (July, 1887). See comment on this view in note on page 17, *supra*.

is a question to be determined by the ratio of the unit of greatest efficiency of the activity itself (corresponding to the unit of production in economics) to the unit of means of exercising the activity; in general, when the former exceeds the latter, association will be necessary. The ratio of the two factors varies in successive stages of society and the necessity of association varies accordingly. In some cases both degrees of association have been manifested in the activity of the same corporation; in the fifteenth century, fishing vessels were frequently owned by a borough and used by the burgesses in common, each conducting his business for himself, but according to the ordinances of the corporation, and using the corporation vessels in common with his fellows. The principle of joint-stock management of the entire activity of the corporation was first fully applied in the East India Company, and in that case it was a gradual evolution; originally an "open" regulated company with several groups of investors, it later by degrees came to be a complete joint-stock company with one body of investors under unified management.

The corporate function has both attributes. However fully developed either attribute may be, the function is not truly corporate if the other be wanting.¹

[After the foregoing somewhat extended discussion of

¹ "To render such an establishment [of a joint-stock company] perfectly reasonable, (a) with the circumstances of being reducible to strict rule and method, two other circumstances ought to concur. First, (b) it ought to appear, with the clearest evidence, that the undertaking is of greater and more general utility than the greater part of common trades; and secondly, (c) that it requires a greater capital than can easily be collected into a private copartnery. If a moderate capital were sufficient, the great utility of the undertaking would not be a sufficient reason for establishing a joint-stock company; because, in this case, the demand for what it was to produce, would readily and easily be supplied by private adventurers. In the four trades [of (a) banking, (b) fire, marine and capture insurance, (c) canals, and (d) city water-supply] both these circumstances concur."—Adam Smith, *Wealth of Nations*, Book V., cap. 1.

VOL. 1—3.



with an
Corporation

the nature of the corporation, the following is offered as a definition: A corporation is a body of persons upon whom the state has conferred such voluntarily accepted but compulsorily maintained relations to one another and to all others that as an autonomous, self-sufficient and self-renewing body they may determine and enforce their common will, and in the pursuit of their private interest may exercise more efficiently social functions both specially conducive to public welfare and most appropriately exercised by associated persons. \

III

ECCLESIASTICAL CORPORATIONS

I—Organic Christianity

CHRISTIANITY has contributed to the progress of civilization in two ways: directly through its qualities as a form of religion and indirectly through the system of social organization incidentally involved in its exercise. The expression of religious thought and feeling must be sought in a more or less elaborate social organization of some kind, whether patriarchal, democratic or other; undoubtedly, too, for each historical form of religion there has been theoretically a particular social structure more suitable than any other for its maintenance and exercise, however remotely it may have been separated from it in practice. The early organization of society for Christian worship however,—the Christian Church before the Reformation,—the more important on account of its great extent and complexity, was molded less in conformity to its inherent religious qualities than in imitation of the structure of the social environment with which it came in contact; for that reason it was possible to use the Church, to the great relief of mankind, for purposes other than those strictly pertaining to the worship of Christianity. Especially during the Dark Ages, after the fall of the Roman Empire and the decay of its institutions, when Europe was threatened with the anarchy of barbarism, the Church was more promotive of civilization as a system of

government than as an embodiment of religious belief and worship. In every century of the Christian era the Church has performed social functions not necessarily devolving on it as an organization of believers in Christianity, largely because it alone has had a social structure adequate for them. During long periods the structure of Christianity has even been so extensively devoted to temporal uses that many spiritual functions have been either neglected or given over to newly devised social organs.¹

[Christianity as a religion before the Reformation was such that Christian society had to be more widely and highly organized than has since been necessary.] It emphasized to an extent approached by no form of paganism the human element in religion. It was not satisfied with being a mere body of doctrine—it had to be translated into the social life of its believers. Its entertainment and propagation involved the enforcement of a social code and the erection of such social machinery as should be incidentally necessary. The faithful were seldom persecuted in Rome for *believing* in Christianity,—they suffered oftenest for *acting* it. Moreover, it was exclusive. No other religion might exist side by side with it as with the various forms of paganism in Rome; it was to be the religion of all men, a world-religion in a world-church. The wider the area of church government and the more numerous its subjects, the stronger and more complex it had to be; the greater the danger of dissent and heresy with the widening area, the abler the Church had to be to check disintegration and preserve unity.

[It was the great extent and complexity of the structure of Christian society, and its adaptability to other than religious purposes, that caused the growth within it of ecclesiastical corporations.] They had not existed in the early Church because the conditions that would give rise

¹ See page 27, *supra*.

to them had not come into existence; but the developing Church became familiar with their use long before analogous institutions were more than fragmentary or rudimentary in the political society of Europe. The secular corporations that had developed under the Roman Empire perished in the general ruin of Roman institutions, or survived here and there as mere fragments during the centuries of feudal domination; the Church, however, suffered less interruption in the course of its development from the Teutonic invasions, and ecclesiastical corporations had not to wait for their rise until a feudal organization of society should enter on its decline. The significance of corporations, whether in church or state, must always be determined by comparing them with the superior social structure under which they flourish; accordingly an examination of the constitution of the Church at the time of the fall of the Western Roman Empire must be preliminary to a detailed consideration of ecclesiastical corporations.

II—The Primitive Christian Church

Christ left no imposing social structure for his adherents when he bequeathed his mission to the apostles. The faithful exercised their freedom to organize themselves by adapting to their conditions the forms of the older Jewish Church or of paganism, the existing political institutions of the Roman Empire, and the fragmentary remains of Greek institutions, or by elaborating into a system the personal relations of Christ and his apostles and disciples,—in general, by resorting freely to all the suitable material so abundantly at hand. The body of Christians, though in scattered groups, was very plastic and susceptible of being molded into almost any form, if only substantial equality and fraternity should be preserved in the mass of its members; moreover, it had a

remarkable power of absorption and was capable of rapidly extracting from its environment a complete system of institutions. The apostles and such of their disciples as they commissioned to do so, passed from city to city over the Roman Empire, establishing in each of them a church of Christians. Each church was to be governed in all things spiritual and temporal by a limited number of its members, at first indifferently called presbyters (elders or priests) or bishops (overseers), chosen by the congregation and ordained by an apostle or his disciple; they were the teachers, priests and rulers of the apostolic church. Unity of faith and discipline among the scattered churches was to be preserved by frequent visitation and close supervision of them on the part of the apostles and their disciples, and by the intercommunication of the several churches. The apostles, gifted with greater purity of faith from their earlier personal association with Christ himself, aimed to preserve it in greater harmony and unity by mutual consultations and correspondence. The bond of unity in the apostolic church was purely one of Christian love and charity.

In each college of presbyters one of the number, either by presiding over the body or by acting as the appointed or chosen medium of communication between his church and the other churches and the apostles, or by serving in both capacities, came to be, by the middle of the second century, the leader of his church; the name of bishop was now restricted to him, and the college of elders or priests acted as his advisers; as his official assistants, deacons were appointed by the bishop, to execute his will in temporal matters, to aid in the oblation of the holy sacrifice, to collect the offerings of the faithful and to distribute alms among the dependent. The bishops were the successors of the apostles in their relations to the churches, except that their oversight was confined to the particular churches over which they presided.

The element of Christian unity contributed by the visitation and supervision of the churches by the apostles having been eliminated by their death, the remaining element, that of the intercommunication of the churches, had to be strengthened; and the bishop being the medium of their intercommunication, the episcopal office was greatly magnified in consequence. The moral unity of the apostolic church became the constitutional unity of the later church in the establishment of provincial synods periodically attended by the bishops of the several churches in each province of the Roman Empire. In each province one church, because originally founded by one of the apostles and situated in the principal city of the province, was accorded precedence over the other churches; its bishop presided over the provincial synods, and as metropolitan sustained to his fellow-bishops a relation quite similar to that of each bishop to his college of presbyters.

The ecclesiastical hierarchy was to be built even higher and the council as the foundation of Christian unity was to be further extended and strengthened. Some councils held in the East had been attended by bishops from more than one province, when the Emperor Constantine caused the summoning at Nicæa, in 325, of the first of the ecumenical councils, a general council attended by bishops or other representatives of all the churches in Christendom. In that council the metropolitans of Rome, Antioch and Alexandria were recognized to be entitled "by ancient custom" to supervisory powers as patriarchs over the other metropolitans in their several districts of the Empire,¹ and metropolitans were not henceforth to take any action affecting any matter of more than provincial importance without the consent of their patriarch. Patriarchal

¹ In later centuries, the metropolitans of Constantinople and Jerusalem were also accorded the rank of patriarch, but it has no bearing on the matter under consideration.

synods or councils were to act as courts of appeal from the provincial synods. The final step was not taken. A contest between the bishops of Constantinople and Rome for the headship of the universal church was not to be decided in favor of either, but was to result finally in the division of Christianity into two great bodies. Latin Christianity in the Western Church and Greek Christianity in the Eastern Church.

Proscribed and forbidden in the Roman Empire for three centuries, the Christian religion and worship had been permitted by the edict of Constantine and Licinius in 312 on an equality with paganism. Later it had been made the legal religion of the Empire by Theodosius in the East and Gratian in the West, though paganism was still tolerated. The crowning victory was won with the destruction of the pagan temples or their transformation into Christian churches before the end of the fourth century. Such was the constitution and dominion of Christianity, when the fall of the Western Roman Empire and the Teutonic migrations cast upon its Western branch the burden of preserving Europe from anarchy. The burden had hardly been assumed when associations in the nature of corporations made their appearance as part of the structure of the Western Church. The corporations that emerged in the history of the Roman Catholic Church and its successor, the Church of England, were of three classes: (1) Convents, (2) Catholic Chapters, and (3) Colleges of Collegiate Churches.

III—Convents

Every body of adherents of a form of belief—whether religious or other—has contained a smaller number more devoted than the others to its tenets and unduly zealous and rigid in putting them into practice. And especially every religion (Christianity no less than others) has had

its class of ascetics (*ἀσκητικός*, from *ἀσκεῖν*, to exercise)—persons over-zealous in the practical application of its principles. Asceticism involves distinction of its votaries from the rest of the mass of the believers of which they are a part, and the distinction has usually found expression in the following a separate life. So close has been the relation between exceptionally rigid application of religious tenets and leading a separate life that asceticism and monasticism (*μονάζειν*, to be alone, to live in solitude, from *μόνος*, alone) have been justly considered nearly synonymous. During the centuries of their persecution in the Roman Empire, all Christians may rightly be said to have been ascetics in comparison with the rest of society; there was no middle ground between unbelief and fanaticism.¹ In the literature of the Church, the monks are often called the successors of the martyrs. The distinction was so marked that the solitary life was also involved, to some extent, in the relations of the early Christians to the rest of society, in the differences of belief, peculiar manners of living and persecutions. The solitary life was in such complete harmony with the conditions surrounding the early Christians that the apologists of monasticism have sought for it, with some degree of success, a positive basis in the teachings of Christ. Referring to the advice given by him to the rich man,² Montalembert says: "Governed by these words of the Gospel, the most illustrious fathers, doctors and councils have declared religious (monastic) life to be founded by Jesus Christ himself and first practised by his apostles. The highest authorities have agreed to recognize that it was born with the Church and that it has never ceased to coexist with her."³ Yet it cannot

¹ "We know with certainty, by the narrative of the Acts of the Apostles, that the first Christians lived as the monks have lived since."—Montalembert, *Monks of the West*, vol. i., p. 294.

² Mark x., 21; Matthew xix., 21; and Luke xviii., 22.

³ *Monks of the West*, vol. i., p. 294.

be admitted that Christian doctrine favored the solitary life as an end in itself; it consistently regarded it only in its effects on general social life and urged it only so far as it aided the Christian to attain more fully his ideal relations to his fellow-men. In general, the orthodox teaching contemplated only temporary periods of solitary life in preparation for more useful participation in the general life of society.

IV—Early Monasticism

Christian monasticism first became an appreciable movement in Egypt, where its adherents were of two classes, hermits (*ἐρημίτης*, from *ἐρῆμος*, solitary) or anchorites (*ἀναχωρεῖν*, to retire), and cenobites (*κοσμοῖν*, common, and *βίος*, life). Many primitive Christians, impelled by the fear of persecution, or the desire to find increased religious zeal in a simple and self-denying life of meditation and worship, retired from the cities to live in waste and solitary places as hermits or anchorites. One of the earliest and most noted of them was Paul, who passed many years in the desert in the second half of the third century. The strictly solitary life was soon modified, however, by the introduction of a social element into it.

St. Anthony, the greatest of the Fathers of the Desert, had inherited wealth, but when he heard read in a church the advice given by Christ to the rich young man, he sold his lands, distributed the proceeds among the poor, and retired into the desert to take up the life of a hermit. Attracted by the fame of his exceeding piety and austerity of life, many other hermits gathered about him to profit by his companionship and teaching, with the result that a common mode of living and thinking came to prevail among them under St. Anthony's direction and control. His instruction was oral and the form of his community consequently lacked stability, though when

he died in 356 at the age of one hundred and five years, he left behind him a discourse for the future guidance of his disciples.

Pachomius, however, who lived from 292 to 348, in early life a pagan and a soldier in Constantine's army, provided an organic system for the monastic life of Egypt. Instead of the oral teachings of St. Anthony, he introduced a written rule (which he said had been brought to him by an angel from heaven) for the government and direction of the monks, among whom, after his conversion to Christianity, he had cast his lot. At Tabenne, on the Nile, in the upper Thebaid, he founded a congregation of eight monasteries, each divided into families, and each family subdivided into cells of three monks each. The entire congregation was under one superior, each monastery under an abbot, and each family under a prior. The monks of each monastery, though in separate cells, lived within one enclosure. So much of their time as was not devoted to religious meditation and worship was passed in fishing, tilling the soil, gathering dates and, most of all, in weaving baskets and mats. They held their goods in common and distributed much in charity to the poor and in hospitality to the stranger and traveller. Both men and women were organized in such communities, though in separate enclosures. The element of unity in monastic life was strengthened by the quite general adoption of Pachomius's rule, and by reciprocal visits and general assemblies. Such were the cenobites, between whom and the hermits the disciples of St. Anthony formed a middle class. In members they increased so rapidly that in the fifth century they were said to equal all the other inhabitants of the province, and entire cities were occupied by them. But the stage of organization attained by monasticism under Pachomius was the highest that it attained in Egypt.

From Egypt, after spreading into Arabia, Syria and

Palestine,¹ monasticism reached Asia Minor. Among the hermits and monks of Syria and Asia Minor there had been no generally accepted standard of life until St. Basil (who lived from 329 to 379) provided the rule that has ever since been known by his name and is even now followed by Eastern monks. Born in Cappadocia and educated in Cæsarea, Athens and Constantinople, he left the schools to visit the saints among the hermits and monks, and lived among them in Egypt, Syria and Palestine. He then adopted their form of life and retired to his estates in Pontus to follow it. Afterwards he was called from his solitary life to become a priest, and in later years he became Bishop of Cæsarea. Then he travelled over his province, uniting the scattered hermits in monasteries and founding nunneries, and giving to all of them his uniform rule. St. Basil was the first monk to become a bishop and the first bishop to introduce monks into his cathedral church as priests. What he added to the organization of monasticism consisted in making it not only contemplative but active, and in strengthening the clergy and Christian church by bringing them into direct contact with the greater piety of the monks,—in fine, in making monasticism not an end in itself, but a means to an end, the betterment of the universal church. His rule (which was in the form of answers to two hundred and three questions) emphasized the superiority of the monastic (or cenobitic) to the strictly solitary life, as inculcating greater charity and humility; it also enjoined chastity, implicit obedience, and self-abnegation, and a life of industry and labor. During the time of St. Basil, monasteries multiplied

¹ In Palestine the so-called *laura* was especially common, though it had also existed in Egypt. It was a collection of hermits' cells, not at first organically connected, but simply grouped about some holy place or pre-eminent hermit; it usually became later a monastery or group of monasteries, especially when the centre of attraction was a man rather than a place.

rapidly in the East, and after his death no Eastern province of the Empire was without them. St. Basil was the father of Eastern monasticism, and his rule was its constitution. But in the East the monasteries never attained an organic connection with the whole church. St. Basil dealt with the monks rather as individuals than as corporate groups or members of them, and his rule was rather assumed by the monks than conferred by the church; they were neither created nor recognized by the church as corporate groups. The Roman Church, with its greater genius for organization, was to fill out the outline of corporate monastic life by bestowing on the convents of the West the definite and organic relations to the church that were wanting in those of the East.

V—The Roman Church in the Fifth Century

In the fifth century the Roman Catholic Church, as the organization of western christianity, had cast upon it, by the course of events, burdens greater than had ever been borne by any other organization of society. The triumph of Christianity in its recognition as the religion of the Roman Empire in the preceding century, the consequent exemption of its property from taxation and its priesthood from military service, and the succeeding grants of Imperial subsidies and other favors brought into the Church a large membership of former pagans and half-hearted Christians whose adherence to its doctrines was formal rather than real. An inevitable impetus was given to the growing distinction between clergy and laity, between sincere Christians and conventional Christians. The attempted absorption of the Roman population involved the introduction of pagan elements into the rites of the Church in the worship of saints and images. The tendency to pure formalism, always prominent in a state church, was increased in no slight degree. Moreover,

Roman society, aside from its lack of sympathy for the Christian religion, was hopelessly corrupt, and the task of bringing it into conformity with Christian doctrines was almost more than the Church could accomplish,—the Church as an institution of government had to be strengthened at the expense of Christianity as a religion, and at a greater expense, because it is the essence of Christianity as a religion that its doctrines be translated into the activity of every-day social life. It was inevitable that a considerable part of the more zealous Christians should be crowded out of the Church, as organized and administered under the influence of its environment, and equally as inevitable that such Christians should sooner or later adopt a separate organization. The rise of monasteries as part of the organization of Christianity was due, in general, to the inability of the current government of the Church to comprehend and regulate the life of the most vigorous part of Christianity.

Perhaps the Church might have elevated the mass of its membership nearer to the plane of its priesthood and more zealous laity, might have resisted the introduction of pagan elements into its worship, or, once introduced, might have gradually eliminated them, or perhaps it might have eventually molded Roman social life into substantial conformity with its rules of conduct, if its *internal* affairs had been its only charge; but the decadence of the Imperial government, the irruptions of the barbarians and the assertion of pretended rights by the Eastern Empire and the Eastern Church demanded such an extended use of the governmental machinery of the Church for *external* purposes that it was fortunate in preserving any considerable part of the older Christianity. Social stability, the protection of person and property and the maintenance of law and order had to be assured. The inroads of the barbarians had to be withstood. Armies had to be maintained and towns and prisoners

ransomed. The conversion of some of the barbarians to Christianity and the reclamation of others from the heresy of Arianism had to be accomplished and their results made steadfast until a new Roman Empire and an extended structure of the Church itself might provide organic stability. The destruction of the earlier literature, art and science of Greece and Rome was imminent. In the impotence of the temporal government and the corruption of individual life, the Roman Church had the whole burden to bear. Nor was the burden made lighter by the attitude of the Eastern Empire and Eastern Church, both powerless to assist, but eager to reap the advantages of the struggles of the Roman Church. The ecclesiastical structure, strained as it was, would probably have succumbed if some of the weight imposed on it had not been shifted to subordinate social organizations—the monastic corporations.

On the basis of their relations to the Roman Church, as well as of their internal organization, the history of Western monasteries may be divided into six periods, each of which is characterized by the origin and development of a peculiar class of monastic bodies:

1. 340–529. The Pre-Benedictine Period. From the origin of Western monasticism to the adoption of the rule of St. Benedict.

2. 529–910. The Benedictine Period. The “Heroic Age” of monasticism. From the adoption of the Benedictine rule to the grouping of the Benedictine monasteries in “congregations,” as those of Clugny and Citeaux.

3. 910–1210. The Congregational Period. The “Knighthood of Monasticism.” From the origin of the congregations of reformed Benedictine monasteries to the rise of the Mendicant Orders.

4. 1210–1534. The Period of the Mendicant Orders. From the organization of the Mendicant Orders to the Protestant Reformation.

5. 1534-1773. The Period of the Jesuits. From the Protestant Reformation to the suppression of the Jesuits.¹

6. 1773—. The Modern Period. From the suppression of the Jesuits to the present time.²

VI—The Pre-Benedictine Period, 340-529

It was not merely accidental that the beginning of monasticism in Italy, usually placed at 340, was almost coincidental with the triumph of Christianity in the Empire, the peace of the Church dating from 312. The often-repeated statement that the monks were the successors of the martyrs contains much truth; when the State Church widened enough to make room for the mass of the Roman people, it did not remain deep enough to include a large part of the zealous Christians to whom the introduction of foreign elements into the Church was offensive—and left them to become hermits and monks. The Roman Church was at first opposed to the new asceticism, just as the Romans had earlier opposed Christianity, when all its believers were more or less ascetic. Persecution without the state had given place to persecution within the state; the same classes were persecuted and the same classes were their persecutors. Early monasticism in the west was an effort to practise orthodox Christianity for its own sake by its zealous adherents. As a movement of importance, it got its chief impulse from the teachings of the Fathers of the Church.

St. Athanasius, the opponent of Arianism, in one of his exiles, spent a season in Rome and there advocated the ascetic life, with which he had become familiar in Egypt;

¹ The Mendicant Orders and Jesuits, as well as some of the orders of the Congregational Period, though not properly included in the strictly monastic orders, were nevertheless their legitimate successors, and are accordingly classified with them. See p. 62, *infra*.

² In accordance with the plan of this work, the Modern Period will not receive consideration in this volume.

he offered the "Patriarch of Egyptian monks" as an example for believers in a "Life of St. Anthony," even if he added to the known facts such imaginary elements as would make it rather a description of the ideal ascetic life than a faithful biography. St. Jerome did more by persuading some of the wealthy Christian women of Rome, descendants of old patrician families, to devote their lives to self-denial and their wealth to founding monasteries (though mostly in the East); he himself gave to the world the Vulgate as a monument of the industry of his solitary life. St. Ambrose, from his cathedral chair at Milan, preached asceticism so eloquently that Milanese matrons restrained their daughters from hearing him, lest they should be induced to make vows of chastity and assume the rigorous ascetic life; moreover, he permitted the settlement of a body of monks at the very gates of the enclosure of his church. St. Augustine, in imitation of St. Basil and in anticipation of a general movement of later centuries, introduced the *vita communis* of the monks among the priests of his cathedral church at Hippo.

But before the time of St. Benedict monastic and ascetic life was unorganized and formless; the Pre-Benedictine period might almost be called the Pre-Corporate period. Many inhabitants of the Italian cities made vows of chastity or poverty, and contrived to live under them in the midst of society, while others became hermits living under the rule of St. Basil, some newly devised rule or no rule at all. From the fifth century date the *gyrovagi*,—dissolute vagabond monks.

During this period no organized efforts appear to have been made by monks to reclaim Roman life from its corruption; the monastic life was lived for its own sake. Some of the earliest monks, however, devoted their energies to missionary work among the barbarians. About 380, St. Martin of Tours introduced monks into Northern

VOL. I.—4.

Gaul through his monastery at Poitiers. In 410, Honoratus founded the monastery of Lesinium, afterwards so prolific of priests and bishops. About 415, John Cassianus placed a body of monks at Massilia (modern Marseilles) and anticipated St. Benedict's later work by writing for them his *De Institutis Cœnobiorum*.

During the latter half of the fifth century, however, monasticism made no progress, even if it held the ground it had gained. St. Augustine, the last of its great promoters, had died in 430; and no other great name replaces his before that of St. Benedict of Nursia in the beginning of the next century. It lacked unity of organization and purpose, an element to be supplied in the next period.

VII—The Benedictine Period, 529–910

Born in Umbria in 480 and sent to Rome for education, St. Benedict of Nursia deserted the corrupt life of the city in 494 and retired to live for three years the life of a hermit in a cave in Sublacum (or Subiaco). The fame of his piety and wisdom drew other hermits about him, and wealthy Romans placed their children in his charge for spiritual and intellectual training. He was then placed at the head of a monastery in the vicinity, but withdrew from it when he found the monks unwilling to live the life he desired. After founding others, he finally, in 528, founded the celebrated monastery of Monte Cassino; in the following year he gave to the monks under him for their government the rule that was to serve as a constitutional basis of the interior monastic life for more than a thousand years.

The Benedictine rule consists of seventy-three chapters. After a novitiate of one year¹ (afterwards increased to two years) the monk entered into the full fellowship of

¹ Before the sixth century, it had been held lawful for monks to return to the world, but it had been regarded as blameworthy and to be expiated by penance; now, however, the monastic vows were regarded as binding and

the monastery upon taking the three vows of *stabilitas loci* (fixity of residence), *conversio morum* (implying poverty and chastity) and *obedientia* (obedience). At the head of the monastery and elected for life by all the monks was to be the abbot,¹ whose will should be supreme, but who should in all important matters reach a decision only after having taken the advice of the whole body, though in less important matters the advice of the elder monks alone should be sufficient. If the body of monks should be numerous, it was to be divided into groups of ten, each under a dean appointed and removable by the abbot. If, indeed, the body should become too large for one monastery, it might be divided and its parts placed under priors or superiors appointed by the abbot and subject to him.² If a monk should be rebellious, disobedient, proud or complaining, he might by steps be secretly admonished, publicly reprehended, excommunicated, corporally chastised or finally expelled. After expulsion, a monk might be readmitted only three times. No monks from other monasteries might be admitted without the consent of their abbots.

No property should be private, but all should be held in common and distributed to each for his use according

strictly enforceable. The monasteries thus became more essentially corporations through the fixity and stability of the social relations assumed by the monks. See p. 49, *supra*. The requiring the novitiate was correlated to the enforcement of the monastic vows.

Ample provisions were made by St. Benedict for the "offering" of children (hence called *oblates*) to the monasteries as novices, though of course their novitiate would have to be longer than two years.

¹ Originally the choice of the more discreet monks was held to prevail over that of the less discreet, even if the latter were in the majority, the bishop of the diocese, or pope, or temporal ruler being the judge of the relative weight of discretion.

² As a matter of fact, this part of the rule was not frequently applied in Benedictine monasteries. They usually remained separate and distinct and not "affiliated." The "congregational" feature was developed in a later class of monasteries. See pp. 56, 58, *infra*.

to his needs. As to clothing, each should have such as the nature of his labor and the season of the year should require; "concerning the color and size of which things the monks shall not talk; but they shall be such as can be found in the province where they are or as can be bought the most cheaply." Each should have a cowl and gown and a working garment, as well as boots and shoes. If a monk should be about to go upon a journey, he should have the use of a cowl and gown a little better than the ordinary, but he should return them after his journey to the vestuary of the monastery. Worn-out clothes were not to be discarded, but to be replaced in the vestuary for distribution among the poor. Each one should have for his bed a mat and a woollen covering—which were to be frequently searched lest private property should be concealed in them! To remove any excuse for acquiring private property, the abbot should provide each monk with a cowl, a gown, boots, shoes, a binder for the loins, a knife, a pen, a needle, a handkerchief and tablets. If possible all should sleep in separate beds in a common dormitory.

Two meals should be served each day in a common hall; each to consist of two cooked dishes, unless it should be possible to add a third of apples or vegetables; but "eating of the flesh of quadrupeds shall be abstained from altogether by every one, excepting alone the weak and sick"; and each monk should be allowed only one pound of bread and a *hemnia* (half a pint) of wine each day; though all the regulations should be subject to modification by the abbot according to the season of the year, the labor of the monk and other such circumstances. The cellarer (or steward) should hold his position permanently, subject only to the abbot, but the work of the kitchen should be performed by the monks in weekly turns. No monk should partake of food outside of the monastery without the consent of the abbot.

The monks should not be idle, but should work in the fields or wherever else directed by the abbot. If any monk should be an artificer, he might work at his craft within the monastery, though the goods he should produce would be the property of the community. Silence and humility should be cultivated at all times. Certain hours of the day should be reserved for meditation, prayer and worship, including the exercises of the "seven canonical hours." Monks selected by the abbots for ordination as priests, or priests who should be admitted into the fraternity as monks, should receive the same treatment and be subject to the same regulations as other monks. Special care should be taken of the young, the sick and the infirm; and hospitality should be extended by the abbot to the stranger and traveller. If possible the monastic enclosure should have within it water, a mill, a garden, a bakery and facilities for the different arts, to the end that the contact of the monks with the outside world might be as slight as possible.¹

Such was the internal structure and life of the Benedictine monasteries. What was their external relation to the Church? In the course of the historical development of any class of corporations, the question of their relation to the general organization of society in comparison with which they are in a sense exceptional, is sure to arise at some time, and whenever it arises it is important. Groups of monks were not true corporations until their inter-relationships and their relations with other members of society were determined and enforced.

The Council of Chalcedon (451) had first recognized the bodies of monks that had multiplied without order or regulation within the pale of the Church, and had subjected them, like any other body of laymen, to the control and protection of the bishop of the province in

¹ Scholastica, sister of St. Benedict, is said to have founded nunneries on the basis of the Benedictine rule.

which they lived.¹ The rule of St. Benedict had been sanctioned by Pope Gregory I. in the Council of Rome of 595; and in the Council of Rome of 601, all monasteries were relieved by him of the control of bishops (except with the consent of abbots) in a decree in which he said: "The charge which we formerly filled as head of a monastery has taught us how necessary it is to provide for the tranquillity and security of the monks; and as we know that most of them had to suffer much oppression and injustice at the hands of the bishops, it concerns our fraternal feeling to provide for their future repose." St. Gregory the Great, the first Pope of that name, himself formerly an abbot and founder of monasteries, and the first monk to become pope, was the first to foresee the future importance of monasteries to the Church and to the papacy. That by independence of activity they might become more efficient, he granted them numerous "exceptions." He essayed to make their constitution more nearly perfect by supplementary provisions:—abbots of irregular life should be deposed, discipline in the monasteries should be enforced, monks should not wander about or be harbored by others in their wanderings, the novitiate should be two years instead of one year, monks and nuns should reside in sepa-

¹ "No monk shall live anywhere, nor establish a monastery or an oratory contrary to the will of the bishop of the city; and the monks in every city and district shall be subject to the bishop, and embrace a quiet course of life and give themselves only to fasting and prayer, remaining permanently in the places where they have been settled; and they shall meddle neither in ecclesiastical nor in secular affairs, nor leave their own monasteries to take part in such; unless, indeed, they should at any time through urgent necessity be appointed thereto by the bishop of the city. . . . But the bishop of the city must make the needed provision for the monasteries."—Canon IV.

"Monasteries, which have once been consecrated with the consent of the bishop, shall remain monasteries forever, and the property belonging to them shall be preserved; and they shall never again become secular dwellings."—Canon XXIV.

rate monasteries, bishops as well as secular persons should not diminish the property or revenues of monasteries, abbots should be chosen from among the monks by their free and unanimous election and should hold their office until death or the commission of crimes recognized in the canons; no monk should perform secular services, and no bishop should hold a service in a monastery. The Council of Rome of 601 released the monks from another form of dependence upon the bishops that had been imposed by the Council of Chalcedon¹ by bestowing upon them the right to administer the sacraments and to be admitted to any grade of the priesthood.

The Benedictine rule became the general rule for Roman Catholic monasteries, though there was, for the most part, no organic connection between the monasteries in which it was enforced. Benedictine monasteries increased in number very rapidly. Southern Italy and Sicily were covered with them. In 543 St. Mavrus carried the rule into France, and at the end of the century St. Augustine was commissioned by Pope Gregory to plant it in England. In the seventh century it made its way into Spain. In the eighth century Boniface transplanted it from England into Germany. The great work of converting the barbarians to Christianity was performed by monks. As soon as a foothold had been gained by a body of monks in a new land, monasteries were established, and as soon as the work of conversion had been well begun, the monasteries became cathedrals, with their abbots for bishops and their monks for priests.² The monasteries became the training schools of popes, cardinals, bishops and priests. Before the sixth century, monks were only laymen, though distinguished from ordinary laymen, (*seculares*), as *religiosi*, and spiritual worship was performed for them by priests assigned to their monasteries by the bishops. In the tenth century, at the end of the

¹ See *supra*, p. 54, note.

² See pp. 60, 61, *infra*.

Benedictine period, the monks were regarded as a special ecclesiastical order (*ordo religiosorum*) and their secular affairs were administered by lay brethren (*conversi*). It is hardly too much to say that the Church was *monasticized* during the period. As often happens in the development of corporate life, the superior organization of society proved unable to absorb into its own structure the inferior corporate life that it had called into being; it had to be content with annexing the subordinate structure; the Church was unable to comprehend the results of monastic activity within the hierarchy of pope, bishops and priests, and had to make monasteries a part of its own structure.¹ The monastic life, though slightly modified, was very generally introduced into cathedral chapters and the colleges of collegiate churches in the ninth century.²

The Church had its civilizing work to do, not only in Italy but in the Celtic provinces, when the devastating pagan life came in contact with them. To some extent performed through the medium of its regular ecclesiastical organization, the greater service was rendered by the Benedictine monasteries, where the conquered found at least a temporary refuge. Through their industry and frugality, aided by the contributions of the faithful or superstitious, the monks accumulated a body of economic wealth that was devoted very largely to humane purposes,—the entertainment of the stranger, refugee or traveller, the relief of the sick and poor and the preservation of the remnants of the older literature, art and science. If in no other place, there was peace, arms were silent within the monastic walls. The harshness of feudal relations was mitigated by the humility of the monks and the in-

¹ "Never completely incorporated with the ecclesiastical organization, nor ever wholly absorbed by the civil organization, the monastery occupied a peculiar intermediate social position."—Schaff-Herzog, *Encyclopædia of Religious Knowledge*, *sub verbo* "Monastery."

² See pp. 61, 62, *infra*.

fluence lent by them to the enfranchisement of slaves. As the property of monasteries was the property of God, the theory of the divine right of their property must have had a tendency to lend stability and security to all property. With all its faults, monasticism was the great reserve force of civilization in the Middle Ages.

Though the Papacy did not attain the height of its powers until the next period, even in the present period the relation of monasticism to its growth is plainly evident. Gregory the Great had enforced the policy of emancipating the monks from the control of the bishops, and his successors followed his example. The popes and the monks each needed the help of the others in their contests with independent and aggressive bishops. The Papacy was the source from which the monasteries obtained exemptions and privileges: the monks in return became the standing army of the Papacy.

At the end of the eighth century the Benedictine monasteries became corrupt, and the strong hand of Charlemagne was needed to restore discipline in them. After the Diet of Aix-la-Chapelle in 817, however, a systematic effort was made by Louis the Pious to effect comprehensive reformation and reorganization of them. He appointed Benedict of Aniane superior-general of all the monasteries in his realm, and caused him, after having investigated them at the head of a commission, to impose upon them a stricter observance of the older Benedictine rule (though slightly modified). Many of the abbacies and much of the property of the monasteries had fallen under the control of laymen—an abuse corrected to some extent by the restoration to the monks of the rights of free election of abbots and of full administration of their property. What was needed, however, was closer organic connection between the separated Benedictine monasteries, and that was an element added only through the formation of new orders. After the tenth century the

unreformed Benedictine monasteries sank into impotence as social factors.

VIII—The Congregational Period, 910–1210

This period was characterized by the grouping of most of the Benedictine and other monasteries in "congregations" and by a consequent revival of monastic life. Such a movement had been inaugurated under St. Benedict of Aniane,¹ but had been a failure. The interior life of the monasteries was still based generally on the Benedictine rule,² but though they are sometimes called Benedictine monasteries, as distinguished from the later Mendicant Orders, the important point is that the older unit of the single Benedictine monastery had been superseded in this period by the new unit of the congregation of monasteries. Cluniacs, Cistercians, Camaldolites, Celestines and Carthusians have now taken the place of Benedictines.

The monastery of Clugny, founded and liberally endowed by Duke William of Aquitaine in 910, was the pioneer in the reformatory movement. Its first abbot, Berno, and his immediate successors enforced the Benedictine rule with such strictness that many other monasteries were influenced to submit themselves to it by granting the selection of their abbots to the abbot of Clugny; many other monasteries simply profited by the example of Clugny by using its life as a standard for the reformation of their own. The submission of monasteries to Clugny became so general that in the twelfth century its congregation numbered two thousand monasteries in

¹ See pp. 56, 57, *supra*.

² In some of the separate monasteries, the rule of St. Basil was enforced; in others, where the Benedictine rule had been formerly in force, it had been so amended and relaxed as to be virtually a new rule. The order of Grammont, organized in France in 1073, affected to use no rule but that of the Gospel.

France alone; the abbots of Clugny were known as *archiabbates*, as compared with their subordinate abbots. When the congregation became extended, it was divided into ten provinces, and annual general chapters were attended by all abbots; two visitors and other supervisory officers were elected for each province.

In the congregation of Clugny so much depended on the personal character of the abbot of Clugny that the work of Berno, Odo and Peter the Venerable was almost destroyed during the administrations of a few less capable abbots. The Congregation of Citeaux (the Cistercians) profited by the experience of the Clugniacs by inserting suitable provisions in their *Charta Charitatis*, the constitution of their order, in 1119: The abbot of Citeaux should be master over all the monasteries in the congregation, and should visit each of them at least once a year; he should be under the supervision of the abbots of the four monasteries of La Ferté, Pontigny, Clairvaux and Morimond, the chief subordinate monasteries; if he should be remiss or vicious, the supervisory abbots should admonish him four times, and then, in default of improvement, should summon a general chapter and have him deposed by it. On the other hand, if any abbot should be lukewarm in his enforcement of the monastic rule, he might be accused before the annual general chapter, and if found culpable might be compelled to ask for pardon and undergo penance, or be deposed. This was a step in advance of the constitution of the congregation of Clugny.

Nor was the congregational constitution peculiar to the Clugniac and Cistercian orders. It is also found in the orders of Fontevraux (1006), Grammont (1073), Chartreuse (1084) Camaldoli (1018), and other monastic orders of the period, as well as in the military orders founded during the Crusades. When many orders fell into decay after the Reformation, an attempt was often made to renew them by uniting them to some more flourishing

congregation¹; founding new orders was discouraged, and prospective founders were advised to unite their foundations with whatever congregation should be most in harmony with them.² The future constitutional development of monasticism was to consist largely in perfecting the congregational principle.

The monastic orders were in this period, as in the preceding, the main support of the papacy, while their strength had grown with increasing wealth and numbers and more efficient organization. If in the struggle with the Empire the papacy had to suffer many defections among the bishops, those among the abbots and monks were few. Three of the Popes were Clugniacs. The monk Hildebrand, as Clement VII., asserted the greatest claims to which the papacy could aspire. Peter the Hermit preached the first, and St. Bernard the second crusade. On the other hand, the popes granted to the monastic orders greater powers than ever before. The earlier Benedictines had lived the monastic life largely for its own sake; the privileges bestowed on them were largely in the nature of exemptions, from ecclesiastical authority: the reformed orders regarded the monastic life more as a means to an end within the Church; their privileges were not passive exemptions but active powers. The abbot of Clugny, more influential than any bishop, exercised the power of a bishop in a territory about his monastery. In the councils of the Church, side by side

¹ Cardinal Richelieu aimed to reform the degenerate Clugniac monasteries by uniting them with the Maurinians, and Cardinal Mazarin tried a similar plan, but both failed.

² Likewise older unconnected monasteries were united in congregations. *E. g.*, in Spain, Southern Italy and Sicily, there had long been many monasteries following the rule of St. Basil, some of them antedating the monasteries founded on the Benedictine rule; when an application was made to confirm them in a separate congregation, it was refused with the suggestion that they join some other congregation already organized. Later, however, in 1573, the application was granted.

with bishops abbots enjoyed equal rights. If before the tenth century the popes had delegated the missionary work of the Church to the Benedictines, Innocent III. now delegated to the Cistercians the reclamation of the Albigensians from their heresy, and, upon their failure, directed Arnold, the head of the order, to proclaim a crusade against them. The ecclesiastical hierarchy was more corrupt than the monastic orders; the bishops had few followers, while every monk had taken the vow of obedience to his abbot; the bishops and clergy were complaining of the invasions of their rightful fields of authority by the pope; the abbots and monks were dependent upon an independent papacy for all the rights they had and were to have; plainly the interests of the monastic orders and those of the pope were identical; each depended on the other and neither was disappointed.

In this period the monks still monopolized the literature, science and art of their time, though at its end the growth of the universities and the increase of general enlightenment were to threaten them with competition.¹ Scholasticism (the philosophy of the monastic and cathedral schools) became a system during the tenth, eleventh and twelfth centuries, and found its greatest names among the monks.

This period has been well called the "Knighthood of asceticism." A change had come over the spirit of monasticism; the passive humility of St. Benedict had given way to the aggressive pride of St. Bernard. The one extolled the virtues of the solitary life; the other preached a crusade. The one regretted that he had to be a monk; the other was proud to be one. Monasticism became rather positive than negative, a form of life with something to accomplish in society instead of a life

¹ This was acknowledged by Benedict XII. in a constitution for monasteries prepared by him, and providing that each monastery should maintain a number of its members at a university to study theology and canon law.

complete in itself. The new temper appears most clearly in the military orders of the crusades, a class of corporations midway between the congregational orders and the later mendicant orders and Jesuits. The Knights Hospitalers of St. John had originally been a body organized to maintain a hospice in Jerusalem for the reception of pilgrims to the Holy Sepulchre, and living under the monastic vows of poverty, chastity, and obedience. Later they added the vow of resistance to the Infidels and defence of the Holy Sepulchre—in distinct recognition of an active social purpose in monasticism. They comprised three classes: (*a*) knights, who (of noble birth) bore arms and performed military services in war; (*b*) clergy or chaplains, who conducted the services in the churches of the order, visited the sick in hospitals, and tended the wounded on the battle-field; and (*c*) serving brethren, who acted as squires to the knights and assisted in the care of hospitals. The government of the order was vested in a Council over which the master of the order presided,—a step beyond the feature of congregational orders that one monastery should be above the others. All the great military orders, passing beyond their strictly military and religious field, later obtained political powers, resulting in some cases in their suppression. Within the military orders there was a greater differentiation of classes of members than in the purely monastic congregations—a feature to be even further expanded by the Jesuits.

In the congregational orders there was an element of nationalism (if the term may be used for want of a better one), though few of the orders were confined to any one nation. The Cluniacs and Cistercians had their greatest strength in France; the orders closely corresponding to them in Italy were those of Camaldoli and Vallombrosi. The order of Guibertinus in England was parallel with that of Fontevraux in France. The general chapters

were held at the parent monastery and not in Rome as in later centuries. The orders were not universalized or identified in their administrative centres with the Church, as was later the case with the mendicant orders and Jesuits.

In the fourteenth century, the pontificate of Boniface VIII. being the turning-point, this class of corporations sank into impotence and resisted all the efforts of the papacy to revive them; in England they were suppressed at the Reformation; in France they lasted until the French Revolution; in all Europe they were superseded in the active life of society by the Mendicant Orders and Jesuits.

IX—The Period of the Mendicant Orders, 1210–1534

The four great mendicant orders were the Franciscans, Dominicans, Augustinians, and Carmelites. Though not strictly monastic, they were the legitimate historical outgrowth of monasticism and the most important bodies in the Roman Catholic Church from the beginning of the thirteenth century to the Reformation.

At the fourth Lateran Council in 1215, Innocent III. forbade the formation of new monastic orders, that the entire monastic body might not be weakened by excessive subdivision; yet the mendicant orders were so different from the older monastic orders and promised so much that he favored the formation of the Franciscans and Dominicans.

The Franciscan rule, sometimes called the *Magna Charta Pauperitatis*,¹ consisting of only twelve short

¹ The rule of St. Francis became eventually the rule of all the mendicant orders. The Dominicans had originally used the rule of St. Augustine, slightly modified, but adopted the Franciscan rule in 1220 and became mendicant friars. The Carmelites had their origin in Palestine during the crusades, and lived there under a rule imposed by the Patriarch of

chapters,¹ contained the following chief provisions:—At the head of the whole fraternity was to be a general minister whose orders were to be implicitly obeyed. Over each province a provincial minister was to preside; over each house or monastery a guardian. Upon the death of the general minister,² his successor should be elected by the provincial ministers and guardians in a chapter held once in three years, or after less or greater intervals as ordered by the minister general. If it should become apparent to the body of provincial ministers and guardians that the general minister was not fit for the service and common utility of the brothers, they might elect another in his place. Brothers should obey all their superiors, should be frequently visited by those set over them, and should have recourse to the general or provincial ministers, if they should find themselves unable to “spiritually observe the rule.”

The Franciscan brothers were to live in obedience, without personal possessions, and in chastity. Francis promised obedience and reverence to the pope, and to the Roman Church, and the other brothers were to obey Francis and his successors. Brothers were to be admitted to the order only by provincial ministers after a strict examination and a year of probation. They were to be disciplined by elaborate fasting. The clerical brothers were to perform the divine service according to the order of the Roman Catholic Church. Entertainment and hospitality might be accepted by the brothers, but they were always to walk, and avoid riding if possible. No money was to be received or handled by any of the order, and even clothing was to be provided for the brothers

Jerusalem; afterwards, when they removed to Europe, during the thirteenth century, they also became mendicant friars by the necessary modification of their rule.

¹ *Bullarum Romanarum*, Edition Tauricomusis, vol. iii., p. 394.

² Among the Carmelites the general was elected for terms of six years.

by the general or provincial ministers through spiritual friends.

“Those brothers to whom God has given the ability to labor, shall labor faithfully and devoutly; in such way that idleness, the enemy of the soul, being excluded, they may not extinguish the spirit of holy prayer and devotion, to which other temporal things should be subservient. As a reward for their labor, they may receive for themselves and their brothers the necessities of life, but not coin or money,—and this humbly, as becomes the servants of God and the followers of most holy poverty.” “The brothers shall appropriate nothing to themselves, neither a house nor a place, nor anything else; but as pilgrims and strangers in this world, in poverty and humility serving God, they shall confidently go seeking for alms; . . . and wherever the brothers are and shall meet, they shall show themselves as of one household; . . . and if any of them fall into sickness, the other brothers ought to serve him, as they would wish themselves to be served.”

The sins and shortcomings of brothers were to be referred to the provincial ministers, who might enjoin penance upon them or give them over to some priest of the order for that purpose.

Brothers might not preach in any bishopric if forbidden by the bishop. And no brother might preach at all, except after examination and approval by the minister general as to his fitness. Suspicious intercourse with women should be avoided, and nunneries might not be entered without the special permission of the Apostolic Chair. Brothers might go among the Saracens or other infidels upon securing permission so to do from the provincial ministers.

The pope conferred upon the mendicant orders the right of preaching and the cure of souls in any district or country, and ordered that each should have a cardinal for its governor, protector and corrector. Each order

VOL. I.—5.

eventually made Rome its administrative centre and the residence of its general. They multiplied so rapidly in numbers, that before the Reformation they wielded a greater force than the ecclesiastical hierarchy. In some cities they were so numerous that the cities had to be divided into districts, each of which was exclusively assigned to the brothers of one order. The Church was threatened with absorption by the mendicant orders and the older monastic orders. Among both the Franciscans and Dominicans there was added to the two classes of priests and lay brothers a third known as "Tertiaries," persons who lived in the world and adopted a semi-monastic rule provided by the order. Almost contemporaneously with the founding of the order of St. Francis, Clara of Assisi founded a parallel female order—the Sisterhood of St. Clara—under a slightly modified form of the Franciscan rule.

The orders became so extended that disagreements arose within them. In 1517 Pope Leo X. had to give recognition to a division of the Franciscans into Observantes and Conventualists. In such cases the order was usually not absolutely divided, but the dissenting body, if so considerable as to demand recognition, was given a separate vicar-general. Among the Carmelites, the congregation of Mantua, and the "Barefoot" Carmelites of Spain and Italy were granted separate vicar-generals. The reformed order of Augustinians, to which Martin Luther belonged, was one under its own vicar-general. The well-known Capuchins were a reformed order of the Franciscans organized by Matthew de Bassi and accorded the privilege of choosing their own vicar-general in 1525. Thus, at least, the semblance of a unified organization was maintained.

As a matter of organization, the mendicant orders differed from the earlier monastic orders in being more highly centralized, in maintaining closer relations with

the popes by having their systems radiating from Rome, in having larger and more nearly universal fields of activity, and in their desertion of the monastery (or restricted locality) as their unit. The Benedictine of the sixth century had been a member of a monastery; the Franciscan of the fourteenth century was a member of an order as wide as the Church. The development was parallel (though earlier in time) with that of monarchy and national administration out of feudalism.

Their social functions were far in advance of those of their predecessors. Their work was to give new life to the Christian religion and uproot heresy by practising humility and preaching, the Franciscans rather by the former, the Dominicans rather by the latter. The degeneracy of the clergy and the proud indolence of the monastic orders left the masses of the people, after the first five crusades, disheartened and spiritually miserable. The crusades had been a manifestation of the chivalry of Christianity; they had all but failed. The thirteenth century called for humanity in place of chivalry. The Church, as organized, was powerless to fill the need of the time. The mendicant orders were the organized forms of the new social force. They were churches within the Church. The granting of corporate powers to the mendicant orders is only evidence of the tendency of all organized societies to rely, in their extremities, rather on corporations than on their own organization.

It had been suggested that with the Benedictines the monastic life was largely an end in itself, and that with the congregational orders it was less an end in itself, and more a means to an end. With the mendicants the life of the order (while it remained uncorrupt) was almost entirely for the purpose of affecting society in general; those who desired to practise it for its own sake were organized as "Tertiaries." For this reason fixity of residence had not been contemplated by St. Francis, though

St. Benedict had imposed on his monk the vow of *stabilitas loci*. The mendicants were an itinerant priesthood to seek men wherever they might be found, and to benefit society spiritually by *autos-da-fé* as well as masses.

During this period the Franciscans and Dominicans sustained the monastic reputation for learning by producing many of the most learned men and greatest academicians of the time; but it is an important fact that they accomplished it rather through the universities than through the machinery of their own orders—a presage of the future differentiation of educational from ecclesiastical corporations.

The Reformation found the mendicant orders in decay; wealth accumulated in spite of vows of poverty had engendered indolence and self-seeking; and envy and jealousy between the orders and between factions within them had displaced zeal for the spiritual welfare of men. In England they were suppressed along with the monastic orders. On the Continent the Church made heroic efforts to reform them, but with only moderately substantial results. Ecclesiastical corporations, like others, have seemed incapable of reformation without such organic changes as to make them virtually different organizations. It has seemed impossible to infuse vitality into a corporate structure when once it has been pervaded by corruption. Instead of a genuine revival of the corporations that had declined by the end of the period, a new class of corporations made their appearance, differing from their predecessors less in form than in the degree to which the same general form was developed.

X—The Period of the Jesuits, 1534–1773

Ignatius de Loyola founded the Society of Jesus in 1534, but it received the formal approval of the Church only in 1540. In the latter year Pope Paul III., in the

bull *Regimini Militantis Ecclesiæ*, gave the organization his sanction :

“Whereas, we have lately learned that our beloved son, Ignatius de Loyola [and ten others] have met together and become associates; and renouncing the seductions of this world, have dedicated their lives to the perpetual service of our Lord Jesus Christ, and of us, and of other our successors, Roman Pontiffs; and expressly for the instruction of boys and other ignorant people in Christianity; and above all, for the spirit and consolation of the faithful in Christ, by hearing confessions [etc.] . . . we receive the associates under our protection and that of the Apostolic See; conceding to them, moreover, that some among them may freely and lawfully draw up such constitutions as they shall judge to be conformable [etc.]. . . . We will, moreover, that into this society there be admitted to the number of sixty persons only, desirous of embracing this rule of living, and no more, and to be incorporated into the society aforesaid.”

The limitation of membership to sixty was removed by a second bull of the same pope in 1543.

The constitution provided for in the bull of approval appears to have been completed in 1552. At the head of the order was to be a general with his residence at Rome and possessing almost absolute authority over the members of the order. He was to be elected by a general chapter or congregation consisting of two *professi* living at Rome, all the provincial generals, and two *professi* chosen in each province by a provincial congregation or chapter. Four assistants should also be elected by the general congregation to reside near the general at Rome and aid him in the administration of the affairs of the order, each with particular reference to one of the four original provinces. The general congregation should also appoint one “admonitor” who should be in continual attendance on the general for the purpose, “should he

perceive him swerving from the right path, with all possible humility to advise him, after earnest and devout prayer to God, what he considers to be the best course to follow."

Extreme discrimination was to be exercised in the admission to membership in the order. Members were to be drawn from the best social material. Candidates had to possess a comely presence, youth, health, strength, facility of speech, and steadiness of purpose. No heretics or schismatics, homicides or other criminals, married men, or persons of weak or unsound mind, were eligible to membership. The governable passions, habits of sinning, unsteadiness and fickleness of mind, lukewarm devotion, want of learning and of ability to acquire it, a dull memory, bodily defects, debility and disease, and advanced age were some of the impediments to candidacy. Any member might be expelled by the general or the general congregation.

The members were divided into four general classes: (*a*) *professi*, (*b*) coadjutors, (*c*) scholars, and (*d*) novices, —to which ought perhaps to be added a fifth class, (*e*) of laymen living in society and maintaining secret relations to the order and corresponding to the Tertiaries of the Franciscans and Dominicans. (*a*) The *professi* were the class from which the highest officers of the order were chosen. (*b*) The coadjutors were both temporal and spiritual, the former as agents and stewards in business affairs, the latter as priests. Both of these classes passed through preliminary periods as (*c*) scholars and (*d*) novices. The colleges of the order were presided over by rectors, houses of first and second probation by superiors, and provinces by provincial generals, all appointed by the general for limited terms from the class of *professi*.

No property should be owned by the members. Private property should be disposed of at the bidding of the general within a year after the admission of its owner into

the order; "and he will accomplish a work of greater perfection if he dispose of it in benefit of the order." Endowments should not be received by the order save for the support of its colleges, scholars, and instructors. No ecclesiastical dignity or benefice, or payment for services, as that of hearing confessions, should be accepted by members. Absolute obedience should be the bond that bound together the several parts of the order in their intricate relations.

"As for holy obedience, this virtue must be perfect in every point,—in execution, in will, in intellect; doing what is enjoined with all celerity, spiritual joy, and perseverance; persuading ourselves that everything is just; suppressing every repugnant thought and judgment of one's own, in a certain obedience; . . . and let every one persuade himself that he who lives under obedience should be moved and directed, under Divine Providence, by his superior, just as if he were a corpse, which allows itself to be moved and led in every direction."

Members were to have no communication with other men within or without the order, except with the permission of their superiors. An elaborate system of reports kept the actions of every member and every part of the machinery of the order under the eyes of the higher officers. To the old monastic vows of poverty, chastity, and obedience imposed on all members, a special vow of obedience to the pope was exacted of the *professi*, the highest class of the order.

The general aims of the Jesuits were, positively, the promotion of the interests of the Roman Catholic Church, and, negatively, the undoing of the work of the Reformation by suppressing Protestantism, as indicated from their point of view by their motto, *Ad Majorem Dei Gloriam*. The means employed had close reference to the conditions of the time. As Protestantism was largely

an assertion of individual reason against authority, they aimed to suppress it by maintaining colleges of their own and working their way into other institutions of learning. As the result had taken place under the protection of temporal rulers they sought to attain control over European princes by every conceivable avenue, from acting as their confessors and tutors to enrolling them in their membership; if control of hostile governments could not be compassed, their work was hampered to the greatest possible extent by the employment of all the arts of diplomacy and intrigue. Incidentally they planted Roman Catholic missions in the East Indies, Japan and China, and in North and South America, aiming always rather at the attainment of control through the machinery of their order than at the dissemination of doctrines. The first thing needful for the Roman Catholic Church was the reassertion of its authority, of its control of the framework of society; afterwards the enlightened tendencies of the time might be accommodated within it. With its large membership of carefully chosen men,¹ its highly concentrated and unified organization, and its wide ramifications, touching society at every point and in every country, it was the strongest factor in the counter-Reformation in the second half of the sixteenth century.

But corporations have seldom been confined to their legitimate field of activity. Always appearing at times when the superior contemporary structure of society is unequal to the tasks by which it is confronted, and when the efforts of individuals in the accomplishment of public purposes are in need of combination and correlation, their

¹ When Loyola died, in 1556, the order had 12 provinces, 100 houses, and more than 1000 members. In 1580, it had 15 provinces, 110 houses, and 5750 members. At the time of its suppression, in 1773, it had 37 houses of *professi*, 669 colleges, 61 houses for novices, 196 seminaries, 335 residences, 223 missions and 22,782 members; it had included in its membership 24 cardinals, 6 electors of the Empire, 19 princes, 21 archbishops, and 121 titular bishops, and had produced 11 martyrs and 9 saints.

powers are likely to be far in excess of their legitimate needs, and their pursuit of public welfare to be subordinated to that of their own interests. The Jesuits accumulated too much power and used it too little for the benefit of the Church and too much for their own aggrandizement. Pope Paul III. seems to have had fears for the future in insisting at the outset upon a special vow of obedience to the papacy. The general verdict of history has been in justification of the expulsion of the order from nearly all European countries during the seventeenth and eighteenth centuries, and of its final suppression by Pope Clement XIV. in 1773 by the bull *Dominus et Redemptor*.

It must not be understood that the Jesuits occupied the whole field of corporate life of the Roman Catholic Church; the sixteenth century (after the Reformation) and the first half of the seventeenth century witnessed a considerable revival of the older monastic orders and the creation of new ones on the same fundamental plan. There was, however, nothing new in their organization. The Jesuits represent the highest point of development reached by corporations in the Roman Catholic Church, a point at which they maintained themselves even against the opposition of the monastic orders, the Church itself and the temporal princes. They filled such a large part in the activity of the Church and the Church became so dependent upon them, unable as it was to do even the legitimate work delegated to them, that their suppression was followed by a restoration in 1814, though under circumstances that cannot be considered here.

XI—Cathedral Chapters

It has been suggested¹ that corporations may have their origin not only in the assumption of a form of organization by newly created groups, but by such

¹ *Supra*, p. 72.

changes in the supreme organization of society as to leave some of its groups, retaining their old organization, in an exceptional relation to it. Cathedral chapters are exemplifications of this principle. The course of their development is in some respects the reverse of that of the monastic bodies. The conversion of bodies of cathedral clergy into corporations is due no more to changes within them than to concurrent changes without them in the ecclesiastical organization.

The Church was largely monasticized during the seventh, eighth, and ninth centuries. The later national churches in France, England, and Germany were established by missionary monks. When the conversion of a considerable part of the barbarians had been accomplished, the abbots became bishops and their monks became their clergy. Thus St. Martin was taken from his monastery at Poitiers to be made Bishop of Tours; St. Augustine became the first archbishop of England, and the first of thirty-eight monks to hold that position in succession; and Boniface became archbishop of Germany. Likewise in Italy, the superior reputation of the monks for piety and learning and their close connection with the papacy made many of them popes and even more of them bishops. But while a large part of the bishops were monks, others were not, and the clergy, taken to some extent from the native inhabitants, and in all cases subject to be influenced by their closer contact with the natives, became farther removed from the moral plane of the bishops; by the middle of the eighth century, the degenerate clergy were plainly in need of reformation. The impulse to the Reformation had been given by the monks, both by example of living and by preaching.¹ The monks

¹ See Edwin Hatch's *Growth of Church Institutions*, p. 161. In writing this head and the next one (on Collegiate Chapters) much reliance has been placed on the volume of Mr. Hatch referred to. In fact, nearly all that is attempted here is to bring the subjects as there treated into orderly relation with the general subject of corporations.

had been rising, since the sixth century, from the position of laymen to that of an order of clergy in the Church, and their example must have had increasing influence in the direction of a reformation. The demand for reformation was answered by almost transforming the cathedral churches into monasteries.

It is stated on good authority¹ that the first trace of the "canonical rule" or *vita communis* is found in a decree of the Council of Vernon in 755, in which it was enacted that "clerks should live either in a monastery under monastic order, or under the control of the bishop under 'canonical' order." Later in the century, bishops in Lombardy "were required to compel their clergy to live under 'canonical' order"; otherwise they would be liable to military service, like ordinary laymen. In 802, Charlemagne enacted at Aix-la-Chapelle:

"Let [the clergy] not be permitted to wander out of doors, but let them live under complete ward, not given to filthy lucre, not unchaste, not thieves, not murderers, not ravishers, not litigious, not passionate, not puffed up, not drunkards, but chaste in heart and body, humble, modest, sober, kind, peaceful, sons of God worthy of being promoted to holy orders, not living lives of luxury or unchastity or other kinds of iniquity in the villages or homesteads adjoining a church without control or discipline." "The theory was that in cities the bishop and his clergy, and in country places the chief presbyter and the younger clergy, should live together under the same roof. When the bishop's house was not large enough, another building was to be provided; but whether it were the bishop's house or another building, it was a 'clustrum' or 'cloister,' a building kept under lock and key, with a common refectory and, above all, a common dormitory."²

The final step was the imposition of a common rule on the body of priests living together.

¹ See Edwin Hatch's *Growth of Church Institutions*, pp. 163-164.

² Edwin Hatch, *Growth of Church Institutions*, pp. 164-165.

Louis the Pious, at the same time when he essayed to introduce the reforms of Benedict of Aniane into the monasteries in 817 also made obligatory upon priests the observance of a rule previously (about 760) devised by Chrodigang, Bishop of Metz; the rule was based on the Benedictine monastic rule, but slightly modified, chiefly in the elimination of the vow of poverty. Louis the Pious also altered Chrodigang's rule so as to make it more widely applicable to bodies of clergy.

"In both forms of the rule, the clergy-house was to have only one door for entrance and for exit; it was to contain a dormitory, a refectory, a storeroom, and other offices necessary for brethren living together in a single society; the clergy were to receive food and drink in prescribed portions; those who had no means of their own were to receive clothing as well."¹

The seven "canonical hours" were to be observed, definite parts of each day were to be set apart for prayer, meditation, discipline and instruction. Each day the whole body should come together to celebrate mass and hear the reading of psalms, canons, the canonical rule, or "treatises and homilies which should edify the hearers." Indeed the name "chapter" is said to be derived from the daily meeting for the hearing of the "chapter" (*ad capitulum*). Later in the same century it was enacted that bishops should provide cloisters; if their own houses were not large enough, they were empowered to acquire neighboring land, by compulsion if necessary; if funds were wanting with which to build, forced levies were to be made on the holders of church lands. "The rule became as general in Italy and England as it had become in the Frankish domain, and by the beginning of the tenth century the canonical life embraced almost all the clergy in Western Christendom."²

¹ Quoted by Edwin Hatch, in *Growth of Church Institutions*, p. 166.

² Hatch, p. 167.

Concurrent with and even preceding the introduction of the canonical rule into cathedral chapters, the episcopacy was passing through an important change. The bishop was coming to be less the head of a predominant church with country churches dependent upon it, and more the supervisor of all the churches in a district; in other words, the diocese and parish were emerging in their modern form. Then separation of the clergy from the bishop became wider and the dean came to be the virtual head of the chapter. Church revenues, originally divided into three parts (for the clergy, church structure and poor), came to be divided into four parts (for the bishop, clergy, church structure and poor). The election of the dean had already been vested in the chapter; election of its members was now absorbed by it. The chapter soon occupied a house separate and distinct from the residence of the bishop. At first temporarily, from the twelfth century permanently, the members of the chapter employed vicars to perform their ecclesiastical services, and some of them were laymen or, if in holy orders, had no actual connection whatever with the cathedral. The sole remaining bond between the cathedral chapter and the hierarchy of the Church was the power of electing the bishops, which has always been retained.

As usual, classes within the chapter were formed and its powers reposed in one class to the exclusion of the other, just as in monasteries the membership was divided into monks and lay brethren, and in the Society of Jesus into *professi* and lower classes. The members of the chapter were distinguished as capitular and non-capitular, according as they participated or not in the exercise of the powers of the chapter.

An instructive process of partial dissolution took place. The revenue and property of the chapter were first separated from those of the bishop; then they were gradually

divided among the members of the chapter, the right to live in the chapter-house being commuted for a fixed payment of money; then the members lived in separate houses, and the other features of the common life vanished, except as the shadow of it remained in periodical meetings or banquets. The word "prebend" (*prebenda*, fodder) originally stood for the right to live at the common table, but was applied to the estate for which it was commuted; and those who had still only the right to live in the chapter-house were distinguished as mere canons in contrast with the prebendaries.

In the eleventh and twelfth centuries, when reforms were attempted in the cathedral chapters, especially by the restoration of the common life (*vita communis*) under the rule of St. Augustine those who assumed it were known as "regular canons" (canons living under a rule or *regula*) as distinguished from "secular canons." Some of the canons who were dissatisfied with the life of the cathedral chapters left the cathedrals and organized monastic orders; such was the origin of the influential Premonstratensian order, founded by St. Norbert in Germany in the twelfth century.

In England, when the monasteries were suppressed, some of them were transformed into cathedrals, the monks becoming secular canons, to wit, the cathedrals of Westminster, Chester, Gloucester, Peterborough, Oxford, and Bristol.

XII—Chapters of Collegiate Churches

When the common life and canonical rule were introduced into churches in the eighth and ninth centuries, the change was intended to apply to bodies of clergy not only in cathedral churches, but also in country churches. Churches that were not cathedrals, and in which there was such an organized body of clergy, became collegiate

churches and their bodies of clergy became colleges or chapters.

The chief difference between them and cathedral chapters was in their relation to the bishop and through him to the ecclesiastical organization. They had no voice in the election of the bishop, and their sources of revenue were more easily distinguished from his; not being situated so as to be clearly subject to the episcopal influence, they came to occupy a position of greater independence.

Their internal organization and development was quite identical with those of the cathedral chapters. After the Reformation in England, the addition of a bishop was all that was necessary to convert some of their churches into cathedrals, the cathedral chapter being already at hand in the collegiate chapter. Some of the monasteries or priories, and especially the latter, were also transformed into collegiate churches, as those of Canterbury, Rochester, Winchester, Worcester, Durham, Norwich, Ely, and Carlisle.

There was no such tendency to affiliation in the cathedral and collegiate chapters as became such an important element in the growth of monasticism; their activity was rather negative than positive; without great aims or purposes of their own, they are examples of ecclesiastical organs forced into a monastic mold. They are also evidences of the efforts of the Church to absorb into its own structure the monastic life; the futility of the efforts appears in the fact that the ecclesiastical bodies into which the monastic life was injected became corporations after a time.

XIII—General Observations

After the foregoing historical review of the growth of corporations in the Church, it may be of advantage to bring together some of the tendencies observable in their

relation to the general ecclesiastical organization, in their internal structure, and in their interrelations. Some such tendencies have already been noticed, others may now be added.

1. The growth of corporations in the Roman Church was due to the incapacity of the ecclesiastical organization to comprehend all the life of Christianity and to provide it machinery for the expansion of its full activity. The Church as an organization of all society—as a spiritual government—had to be so general in its nature that it was unfitted for certain classes of Christians; consequently they had of necessity either to remain entirely outside the Church or be allowed to assume autonomous organizations only nominally within it. The situation was appreciated by the Church, the excluded classes were permitted to adopt their own organization, and the complex of all relations set up by them within their own groups and between their own members and the other members of society were confirmed and sanctioned by the Church.

2. The element of personal interest in the membership of ecclesiastical corporations was so much more vigorous than the merely general interest (approaching to apathy) of the membership of the Church that they rapidly absorbed the vitality of Christianity,—and the monastic life came to be known as the “religious” as distinguished from the “secular” life. The Church was weakened by the loss of the strength of Christian thought, feeling and action abstracted by its corporations. Nor was the loss compensated by the emulation of the monastic life by the membership of the Church (outside of the hierarchy of the priesthood); the tendency was quite the contrary,—to depress the moral level of the membership of the Church.

3. The Church was never able to reabsorb the structure of the monasteries, so strong was their tendency to independent life. The only way open to the Church to gain



advantage from the existence of the corporations was to accept their fruits (religious zeal and purity) by recruiting the ranks of the ecclesiastical hierarchy from the "religious" orders. The Church thus became so dependent on its corporations that it was virtually unable to exist without them, while it was unable to make them a part of itself. When it attempted to attain the results of monastic life within its own organization by imposing a rule on its bodies of priests in cathedrals and collegiate churches, it soon found that the bodies of priests had become corporations, almost as independent of the Church as the monastic orders themselves, and hardly a part of the ecclesiastical hierarchy.

4. The initiative in the formation of monastic corporations was never taken by the Church. The acts by which their internal and external powers, duties and organization were settled, defined and sanctioned, were in the form of confirmations of the arrangements made by the groups on their own initiative. }

"[The Church of Rome] understands, what no other Church has ever understood, how to deal with enthusiasts. . . . The Catholic Church neither submits to enthusiasm nor proscribes it, but uses it. She considers it as a great moving force which in itself . . . is neither good nor evil, but which may be so directed as to produce great good or evil; and she assumes the direction to herself, . . . she knows that when religious feelings have obtained the complete empire of the mind, they impart a strange energy, that may raise men above the dominion of pain and pleasure, that obloquy becomes glory, that death itself is contemplated only as the beginning of a higher and happier life. He may be vulgar, ignorant, visionary, extravagant; but he will do and suffer things which it is for her interest that somebody should do and suffer, yet from which calm and sober-minded men would shrink. She accordingly enlists him in her service, assigns to him some forlorn hope, in which intrepidity and impetuosity

VOL. I.—6.

are more wanted than judgment and self-command, and sends him forth with her benediction and her approval."¹

The popes understood that the activity of the monks would be of benefit to Christianity as a religion, but that they could not be organized within the Church, as it was; they accordingly confirmed the organization assumed by them, making it subject to the control of the Church only in an extremity, and not immediately.

In the cathedral and collegiate chapters, however, the initiative was not in the bodies of priests, but in their Church. The intention was not to create corporations, but to prescribe a mode of life for certain bodies within the Church; their ultimate corporate character was the outcome of their prescribed mode of life and their changing relations to the other parts of the government of the Church.

5. Every revival in the Roman Catholic Church was characterized by and largely dependent upon an increase in the membership, power and activity of its corporations. In every great struggle, internal and external, from the descent of the barbarians on the Western Roman Empire to the counter-Reformation in the sixteenth century, the Church found its greatest strength in its corporations. And it was unfortunately so, because no reformation that was not effected in the general organization of the Church could be lasting. The gain was at the expense, to a great extent, of the substitution of an outside and semi-independent Church for the regular Church; and corporate life had such a degree of persistence that it could not be absorbed.

6. The ecclesiastical corporations were the support of the monarchical principle in its application in the Church. They were the standing army of the Pope, his bulwark

¹ T. B. Macaulay, "Review of Ranke's History of the Popes," *Edinburgh Review*, October, 1840.

against the independence of archbishops and bishops and national churches,—against heresy within the pale of the Church, and the increased activity of universities and schools without it. But the day of reckoning with the religious orders was to come. The papacy anticipated the evil day by making them its Pretorian Guard, by accepting its nominees or occupants of the Apostolic see, and thus providing a bond of unity between them. Pope Clement XIV. had to abolish the order of Jesuits,—the quintessence of ecclesiastical corporations. There had come to be two popes in Rome in popular phrase,—the “White Pope” and the “Black Pope” (the superior general of the Jesuits). If the revivals of purity in Christianity and the expanding activity of Christian society had found expression through the machinery of the Church instead of ecclesiastical corporations, the power of the papacy would have been seriously threatened. As it was, the Church itself became so corrupt as to suffer contempt in the eyes of the religious orders, and an Augustinian friar setting at naught his allegiance to the Pope, started the Reformation.

7. In the earliest stages, the attitude of the Church towards its corporations was passive; in its latest stages, active. The Benedictines were tolerated by the Church—merely permitted to live a peculiar life; the Church used the Mendicant Orders as its instruments in destroying heresy, and the Jesuits to regain its control over social organization. The canonical chapters were the result of a positive compulsory action of the Church in an effort to accomplish within it what the monks had accomplished without it. But the change from passivity to activity was not merely a voluntary change of attitude on the part of the governing body of the Church; it is rather evidence that concurrently the vital forces of Christianity had been gradually transferred from the Church to its corporations,—the change of attitude was absolutely

necessary if the hold of the Church on Christian society was to be maintained.

8. One marked tendency of the ecclesiastical corporations was to make themselves self-sufficient, to fill the entire zone of activity in which they moved. The monks might well have been served by priests assigned to them by the bishops, but they were not satisfied until they were priests themselves. The Mendicant Orders might have restricted their activity to districts in which the bishops might suffer them to work, but they soon acquired the right to work in all districts without the consent of bishops. The canonical chapters might have lived their common life under the supervision of a bishop's appointee, but they nevertheless soon acquired the right to elect their own deans. When once the body of powers bestowed on the corporations passed beyond the point at which corporate maintenance was assured, they exhibited a striking ability to attract and absorb additional powers until they filled the entire field of activity in which the corporations were placed; they were able to escape reliance on other organizations of society for any part of their activity. Each succeeding group of corporations had greater powers and a wider organization than its predecessors.

9. As the corporations developed there appeared a tendency to internal differentiation and disintegration, approaching in some respects a final resolution of the bodies into their original individual elements. Instead of living in common with the monks, the abbot came to live apart and enjoy separate and distinct revenues, his place as actual head of the monastery being relinquished to the prior or superior, especially when the abbot came to be rather the head of a system of monasteries than the head of a particular one. As the distance between the head and body of the orders increased, more checks were devised to control the head, and even the service for life

was reduced in some cases to short terms of service. Most of the duties of the monastery were early performed in rotation by the monks; but later they acquired some degree of fixity, and many of them were supported by separate revenues; even the positions of those who performed the duties came to be regarded as pieces of property that might be transferred from person to person; in the most degenerate days, many monks ceased to live in common and lived on separate pieces of the monastery lands distributed among them, with little regard for the original purposes of monasticism. In the canonical chapters, the relations of the canons to the chapters became quite insignificant, so far had their corporate dissolution extended.

10. The membership in the corporations became more select. Longer novitiates and periods of probation were required, until the one year's novitiate of St. Benedict became about fifteen years of passing from one grade to another to final admission into the body of *professi* of the Jesuits. While almost any member of society might be a Benedictine, rigid examinations determined the fitness of Mendicants and Jesuits for admission to their orders, and a formidable array of impediments restricted eligibility to fewer persons.

11. The tendency to filiation was so strong that the local unit of the monastery, greatly impaired in the congregation, was finally displaced by the larger unit of the order. The monastic congregations were the earliest "trusts," the Mendicant Orders and Society of Jesus were their logical results—organized churches within the Church, rivalling it in extent and power and threatening to displace it as the government of Catholic Christianity.)

12. The most instructive feature of the growth of ecclesiastical corporations was their tendency to become an organization of the priesthood of Christianity instead of being a total organization of a part of Christian society.)

The early Benedictine convents were merely groups of laymen differing from ordinary laymen only in living a stricter mode of life, enforced and regulated by a written constitution and organized government, but receiving spiritual ministrations from the same body of clergy as the ordinary membership of the Church. The "congregational" convents were an order of the clergy though including a class (now distinct) of laymen devoted to the temporal concerns of the body. The Mendicant Orders were bodies of priests, the only lay element being a class of "Tertiaries" not included in their organization, but identified with them only remotely by practising in their own lives some of the precepts of the friars. The Jesuits were priests, politicians, and teachers, even more distinct from the rank and file of Christianity. The result of this movement was a corporate despotism so strongly entrenched that the Church alone could not dislodge it—perhaps did not dare to attack it because so dependent upon it—and had to accept the assistance of temporal states.

13. {The corruption of monasticism and the consequent injury of the Church have been most frequently accounted for by charging the monks with having intentionally subordinated the original purpose of monasticism, the advancement of Christianity, to the pursuit of their own selfish interests. The charge contains an element of truth, but the influence of the organic system of relations between the monastic orders and the Church is overlooked. The Church deliberately sought the promotion of its own welfare by encouraging the growth of organizations of Christians virtually independent of it; it was the penalty of trying to absorb a large number of members whose participation in its life must have been lacking in zeal and sincerity. } The secondary result was to widen a chasm between the papacy and the great body of Christians within the Church which must have been narrowed in

time if the papacy had not been placed in a position of dangerous independence through the support of the monastic orders. [The weakness of the Church itself, due in large measure to the abstraction from it of the body of Christians organized in monastic orders, was the most potent factor in producing the Reformation.] If the Christians who became monks had been so organized as to be kept in close contact with the rest of the world of Christians of which they formed a part, the public purposes of their organization could not have been so easily forgotten and their private interests could not have been so easily magnified. The criticism, however, might justly be made more widely applicable. The experience of the Roman Catholic Church in the use of corporations was not dissimilar to that of other organizations of society in their use.

IV

FEUDALISM AND CORPORATIONS

THE point in history at which a study of English corporations (except those of the Church) must be begun is that of the dominance of feudalism. In the structure of an ideal feudal system there could have been no place for corporate forms; they would have been out of harmony with it. While in England, as in the other countries of Europe, feudalism did not attain the typical form that it approximated, it was so fully developed under William the Conqueror that only the most rudimentary corporate forms existed in some of the old English towns at the end of the eleventh century. [When corporations began their development, it was at the expense of the feudal system, outside of it and largely in opposition to it, certainly not as an integral part of it or in conformity with it.]

The peculiarity of feudalism was that when it was more nearly perfect it appeared to be the least necessary. Its rise and development were demanded by the need of security,—for the most part, purely physical security, safety of life and limb. After the destruction of the Roman Empire and the infusion into European society of the unorganized Germanic elements, civilization declined until it was checked in its downward course by the interposition of the feudal system. But feudalism as a social structure was inflexible; it could permit within it only a slight degree of social expansion. When the chief work of feudalism had been accomplished in the establishing of a

tolerable degree of order and security, and society had resumed its progress, the feudal bonds were found to be as irksome in restriction as they had been agreeable in protection. Society in its expansion out of feudalism accordingly demanded new forms of organization for its various lines of activity. The want was supplied, for the most part, by corporations, though to some extent also by more extended and more efficient administrative organs of the central government.

As a general principle, it may be said that periods of social growth and expansion in both state and Church have been characterized by an extended prevalence of corporations, while organic periods of social life have witnessed the extension of the machinery of the state. Society has appeared to develop its new activities during periods of transition in the framework of corporations as a kind of scaffolding or provisional structure, to be destroyed during organic periods, when the state and Church have been able to absorb partially or wholly the new activities and incorporate them within their own structure. In many cases the provisional structure has proved to be so appropriate for the activity exercised within it during its expansion that larger organizations of society, in absorbing it, have made the provisional structure permanent and have had to modify their own structures to conform to it. There is more truth, from the standpoint of history, in describing the state as a great corporation than in describing corporations as little states.

The growth of corporations depends much on the social unit, on the relations of the state to the individual. From the dominance of feudalism to the time when it was superseded by national organizations there was a gradual change from local units to national units—from feudal manors to nations. The growth of England outside of feudalism was in new local units (until the period of nationality was reached) and the extra-feudal local

units were generally organized as corporations. When nationality was attained, the autonomy, and independence of the localities disappeared and they were largely replaced by sub-governmental administrative bodies enforcing national laws instead of locally enacted laws. So long as the national unit had been impossible, and local units had been necessary, there had been an appropriate field for corporations, which was occupied by them as far as feudal forms were unable to occupy it. Again when nationality had been attained, English society began an extra-national expansion by the conquest, settlement and economic exploitation of new lands; this movement was organized largely in the forms of corporations until it was complete, when its results were slowly absorbed by the state and the corporations, after a period of obsolescence, passed out of existence. The nation was the largest unit that the state (as organized) could control; when a larger unit was to be comprehended, the state resorted to the use of corporations for the purpose.

Before feudalism was dominant in England, the Church (considered as society organized on its religious side) had anticipated the decentralizing experience of secular society under feudalism and had recuperated its strength through the assistance of monasticism. Monasticism, however, had been made effective through the medium of corporations, which continued in existence and formed a part of the corporate life of post-feudal England.)

Post-feudal society in England, then, except so far as its expanding activities were able to be organized either within the decaying structure of feudalism or within the extended machinery of the state or church, was organized in the forms of (I) Local-Internal Corporations, differentiated into (1) Ecclesiastical Corporations, (2) Municipalities, (3) Gilds and (4) Educational and other Eleemosynary Corporations. England in its national expansion was organized in the forms of (II) National-External Corpora-

tions, differentiated into (1) Regulated Companies, (2) Regulated-Exclusive Companies, (3) Joint-Stock Companies, and (4) Colonial Companies. Broadly speaking, none of the corporations comprised in these classes plays a direct part in the life of nineteenth-century society. A few of them still exist as obsolete survivals of a past social order; a few others are even of recent origin and occupy a legitimate field of activity, but the circumstances under which they have been created and are acting are clearly exceptional in the present order. The examination of the several sub-classes in detail will be the work of succeeding chapters of the present volume.

Under the influence of manifold new social movements that have developed, chiefly since the end of the seventeenth century and have been reflected in social institutions in the nineteenth century, has arisen another class of corporations sufficiently distinguished from all their predecessors if they be called simply (III) Modern Corporations. So great has been the break between the life of this century and the older life, and so numerous are the social factors to be taken into consideration in the interpretation of this last class of corporations that extended treatment of them must be reserved for a separate volume.

V

MUNICIPALITIES

I—Towns before 1100

WHAT degree of growth was attained by cities and towns in Britain under the Romans is unknown, though the scant historical and archæological evidence indicates that they must have acquired considerable size and importance. And perhaps it is just to assume—it is barely more than an assumption—with Kemble¹ that the organization of *municipia*, *coloniæ*, and military stations in other Roman provinces was simply duplicated in Britain. It is, however, a question of hardly more than antiquarian interest, as no substantial features of their civilization and government survived the departure of the Romans except among the incompletely Romanized British during the interval preceding the advent of the Saxons and other Teutonic tribes. The benefits of the adoption of Roman institutions by the native British had been more than counterbalanced by the degeneration due to the contact with Roman social life. Their towns, with their mere shadows of Roman municipal institutions, fell a comparatively easy prey to the Picts and Scots on one hand and the Germanic invaders on the other. But after the British were expelled, their cities and towns were not occupied and inhabited by the invaders. The Germans were not builders of cities or dwellers in them; they were primarily agriculturists. It

¹ Kemble, *Saxons in England*, vol., ii., pp. 264–285.

is a mistake to assume a continuity of English municipal institutions from the Roman days; there was a complete break at the time of the Anglo-Saxon invasion; the institutions of the later boroughs, towns and cities had their roots in the tribal organizations of the invaders.¹

Thus it came that the settlements about fortified places, at the fords of rivers on convenient harbors, or around cathedral churches and monasteries, though somewhat larger than the agricultural villages, were organized on the same model as townships or groups of townships. Thus, too, when feudal institutions developed in England, they covered the cities, towns and boroughs, whose inhabitants were largely engaged in commerce, as well as the purely agricultural villages and manors, though certainly the feudal ties were not so strict in the former as in the latter. Most of the inhabitants of the towns held their land, the basis of their public rights and duties, directly of the king—the towns were said to be “in royal demesne”; a larger proportion of the villages were subject to secular or ecclesiastical barons. The confiscated lands distributed by William the Conqueror among his followers were largely agricultural lands and their villages, —the towns he preferred to reserve to himself.

In the growth of English society out of feudalism there were at first two movements—a main movement in the upbuilding of a central power and an elaborated administrative machinery through which it could act, and an ancillary movement in the creation of corporations that

¹ A somewhat too highly colored view of the Anglo-Saxon town is the following: “The rights of such a corporation [a borough electing its own reeve] were in truth royal. They had their own alliances and feuds; their own jurisdiction; courts of justice, and power of execution; their own markets and tolls; their own power of internal taxation; their personal freedom with all its dignity and privileges. And to secure these great blessings they had their own towers and walls and fortified houses, bell and banner, watch and ward, and their own armed militia.”—Kemble, *Saxons in England*, vol. ii., p. 312.

represented, to a great degree, the inability of the expanding central power to comprehend all the new activity of society. It was the fortunate peculiarity of feudalism in England that it was conditioned by the existence, side by side with its chain of relations from the land-holder to the sovereign, of an immediate relation of every Englishman to the king as his subject,—a survival of the principles of the older English kingship. The main movement referred to was in the direction of extending and perfecting the immediate relations of king and subject, while the intermediate feudal relations gradually decayed. For a time, even the growth of town-life was retained within the regular administrative system of the central power, but eventually it secured organizations of a high degree of independence and autonomy. An understanding of the growth of town-life in its organic independence and autonomy demands a consideration of the relations of the townsmen to the monarch as *rex Anglorum* and his administrative system on the one hand and of their relations to the monarch and baronage as feudal seigneurs on the other hand—the former to discover the actual progress towards a future condition, the latter to observe the departure from a past condition. Yet the study is far from being so simple as it may appear. The monarch did not always distinguish in his dealings with his subjects whether he was acting as English king or feudal overlord; many of the relations, particularly those involved in taxation, were expressed in feudal terms long after the essence of feudalism had departed from them. In the county (the unit of administration) the office of sheriff long betrayed a tendency to become hereditary and in that respect to approximate a feudal type; indeed, the administrative system was tinctured throughout with the color of feudalism. Again, there was such a marked unevenness in the progress of the several local communities, and the set of social relations that constitute a corpora-

tion were acquired so much in fragments and in such varying order and combination, that the movement seemed to be wholly without system. For that reason the growth of towns and town institutions from the Conquest to the middle of the sixteenth century must be considered as a whole; as no town can fairly be taken as a type, the general features of the development must be described, and the experience of particular towns must be used merely for illustration. It will probably be most conducive to clearness to consider first the detailed powers (and correlative duties) acquired by the town communities, and then the social structure through which they exercised them during the four centuries of their growth; the decay of the town corporations may be left for final consideration.

II—External Growth of Towns

The actual transfer of powers from a feudal seigneur, whether king, noble, bishop or abbot, to a body of his vassals, or the confirmation by him in them of powers already assumed or retained in the form of local customs, was usually evidenced by the delivery of a written instrument, a charter, in return for the payment of a sum of money or the rendition of some other consideration. It is to the town charters, accordingly, that one must look for the best record of the changes in the distribution of social powers and duties that lay at the foundation of corporate town life.

The powers, franchises or *libertates* of the towns (except such as concerned their internal organization) may be conveniently considered under four heads: (1) The *Firma Burgi* (2) Tenorial Privileges, (3) Mercantile Privileges, and (4) Municipal Courts.

1. *The Firma Burgi*.—There had been a tendency, for a long time before the era of town charters began in the

twelfth century, to segregate the revenues derived from the towns as well as those derived from other local organizations. The sheriff was the royal officer for the collection of all the revenue from the county, including the towns in it, but he very early came to be held accountable to the Exchequer for a given sum, with the right to retain for himself all the surplus revenues that he could succeed in extracting from the county; in other words, the county was farmed out to him or held by him in ferm, usually for a limited period or during the pleasure of the king. If the county was not held by the sheriff as farmer, he was said to be the *custos* of the county, in which capacity he was required to account to the Exchequer for all revenue collected by him, less his reasonable expenses. The sheriff's representative in the town was the bailiff, sometimes held accountable for all revenue collected, and sometimes for a settled sum, with the right to appropriate the surplus; the bailiff might then, like his principal, the sheriff, be either a *custos* or a farmer of the town.¹ From the exchequer rolls extant it appears that the revenues of some of the towns were reported separately, while those of others were included in the general revenue of the county.² The revenue of each town was regarded as a piece of property, a unit in itself, capable of being transferred from holder to holder like any other piece of property; accordingly the towns "in royal demesne," those whose inhabitants were tenants of the king himself as lord, were often separated from those of the county and conveyed to persons other than the sheriff, to an individual subject, a body of subjects or, most important, to the group of tenants themselves. The *firma*

¹ Madox, *History of the Exchequer*, vol. i., pp. 326-330.

² When later some of the towns had obtained the privilege of accounting directly to the Exchequer, without the intervention of sheriff or bailiff, the sums due from them were not included in the general ferm of the county, but placed separately under the head of *Terra data*. See Madox, *Firma Burgi*, p. 233, and items from the Great Rolls there cited in notes.

burgi was the sum payable to the king as consideration *firma burgi*¹ for the revenues of the town; the person (or persons) who paid it was said to hold the town in ferm, whether perpetually, for a term of years or merely during the pleasure of the king.

It is hardly necessary to suggest that the grant of a town in ferm did not imply a conveyance of the land of the town; what was conveyed was its "issues," consisting chiefly of tolls of various kinds, the profits derived from the town courts and the rents payable by the individual town tenants to the owners of the soil. If land escheated, it escheated to the king and not to the town or other holder of the *firma burgi*.¹

The body of townsmen virtually took the place of the bailiff who had formerly represented the sheriff (and through him the king) in the collection of the town revenues.¹ The townsmen would still have to account to the sheriff for the ferm. But there appears in all corporate life a repugnance to submit to the control of the administrative organs of the state in which it flourishes. Just as the monastic bodies had found relations with the bishops irksome, and had soon found means of severing them, so now the town communities, having disposed of the much-detested bailiff by purchasing the privilege of occupying his place, were very generally willing to pay liberally for the privilege of accounting directly to the Exchequer for the *firma burgi* and such other moneys as should be owing to the king.² Accordingly in the exchequer rolls, the sums due from the towns are found entered separately from those due from the rest of the county and are ordinarily paid by some officer or other representative of the town.

¹ Pollock and Maitland, *History of English Law*, vol. i., p. 641.

² Thus, for example, in the sixth year of the reign of Richard I., Ipswich fined to the King in sixty marks, Norwich in two hundred marks, and Oxford in sixty marks, to secure the privilege mentioned, among others.

VOL. I.—7.

Closely connected with the grant of the town in ferm to its townsmen as in a measure a consequence of it was the grant to them of lands and tenements (or the privilege of acquiring and holding them) whose issues should be applicable to the payment of the ferm. Though a contrary opinion is expressed by Madox,¹ it may well be believed that the ferm of the town, as agreed on by the townsmen, would frequently be larger than its revenues. The revenues were not all that was paid for; the privilege of collecting their own tolls, rents and court fees (all to be properly regarded in the same light as modern taxes, though then viewed as incidental to property in some physical thing or public office), and of having in their own control the social organs for their collection, was an element of freedom well worth buying²; the holding of the *firma burgi* was nearly always accompanied by exemptions from tolls in other towns, and other burdens that would, in a number of communicating towns, decrease the revenues of each of them. Sometimes, too, towns decayed after a perpetual annual ferm had been agreed on, and deficits were regularly left to be made up by unwilling and incapable contributors or expunged from the exchequer rolls in the clemency of the king.³ Probably

¹ In his *Firma Burgi*, p. 251.

² The necessity of dealing with the Crown through sheriffs and bailiffs was a real hardship. If the ferm of the town should not be promptly paid or not accounted for by the sheriff, bailiff or other officer whose duty it was to receive it, "the King's officers of his exchequer might seize the liberty of the city or town into the King's hands. And that was the most usual method and most commonly practiced." See Madox, *Firma Burgi*, pp. 161-164a and examples and documents there cited.

³ In the fifth year of his reign, Henry III. remitted to the citizens of Winchester a part of their ferm; in the forty-ninth year, in compassion for their poverty, he conceded that they should render yearly for twenty-one years one hundred marks on the same terms on which they had been wont to render eighty pounds yearly for the ferm of their city; when the term of twenty-one years expired, they asked of Edward I. that he concede the same terms or appoint a *custos* for the city; the King acquiesced and or-

it was easier to get contributions for the purchase of property whose revenue should be always applicable to the payment of charges than to get contributions for immediate and final application. Again, public-minded townsmen sometimes bequeathed lands and tenements to their towns for such purposes. In many cases in which it appeared that towns were actually unable to meet their recurring charges, the king conveyed to them sources of revenue for their assistance. *E. g.*, Edward II., in the ninth year of his reign, granted to the citizens of Carlisle in aid of their farm certain royal mills there and the right of fishing in the Eden, with other profits.¹

2. *Tenurial Privileges*.—Strictly feudal social relations, in their developed form, were based on the tenure of land, though they were the outgrowth of earlier personal relations.² But after all men's relations to physical things are secondary; the primary relations are their personal relations to one another—their human relations. It is usual to regard the social changes following the eleventh century as caused by changes in the tenure of land, but in such a view effect is unfortunately substituted for cause. The feudal form of society may properly be regarded as a negative form—a form attained by retrogression rather than by progress—one that was good for society only because it was no worse—a refuge for mankind until the storm of the Teutonic conquests might expend its force. While the relations of personal dependence and subordination that characterized feudalism were losing their strength and passing away, it was in the nature of the succession of changes that they should be derided the barons of the Exchequer to receive the reduced farm. See Madox, *History of the Exchequer*, vol. i., pp. 336–337, and foot-notes.

¹ See Madox, *Firma Burgi*, and entry from Great Roll in foot-note. On the general subject of the *firma burgi*, see Pollock and Maitland's *History of English Law*, vol. i., pp. 635–641.

² See Essay on "Feudalism" (p. 48), by W. J. Ashley, in volume of *Essays on English Constitutional History*.

reflected in concomitant changes in the tenure of land. It may hardly be said that the system of land tenure was modified; it was rather gradually superseded by a new system; feudalism was so rigid and inflexible that it could not be remolded or expanded—it had to be broken into fragments.

This is not the place for a tracing in detail of the steps by which the older feudal tenures were superseded; it must suffice to mention and account for the peculiar privileges of landholding enjoyed as a feature of the organization of towns. Originally, when feudal tenures approached nearest to systematic perfection at the end of the eleventh century, obligations of varying degrees of independence and servility rested on all tenants of land. In the manorial village, where the chief industry was agriculture, the feudal obligations took the form, chiefly, of labor on the lord's demesne, or of other labor connected with the agricultural life of the village. But the increase of population and the growth of a class of laborers brought about the use of the demesne land of the manor largely in the same way as the common fields; the lord and tenants were alike in position to make less use of personal services as a bond between them, and the commutation of the services to fixed renderings of goods or money gradually followed. The landowners became to a large extent landlords enjoying rent from tenants rather than feudal seigneurs enjoying a complex of feudal services from subjects.¹ But outside of the agricultural life to which England was almost exclusively devoted at the time of the conquest the changes were greater. Whether there is some element in commercial and manufacturing life that makes them unsuitable for the form that was characteristic of feudalism² may well be doubted, but it

¹ W. J. Ashley, *English Economic History*, vol. i., cap. i., "The Manor and Village Community."

² Such seems to be the assumption underlying Herbert Spencer's well-

is true that such life developed in England outside of the feudal forms in which society was enclosed in the eleventh and twelfth centuries. Trading and the pursuit of handicrafts had more remote relation to the land than had agriculture; if organic relations of dependence and subordination were to be introduced into them, they would have to be based on an element more vital to them; the future was to show that the organization of commerce and industry had to be based on capital (in the narrow sense) and not on land. The inevitable result of the development of the new social activities was a diminution of the extent to which feudalism should be an efficient system of social structure. If, then, even within the limits of agriculture, feudal tenures were displaced, they must have given way even more readily in other fields of activity. Now, the towns were the seats of the new social activities, and the greater volume the activities attained, the greater was the separation from the older feudal system of land-tenure. The socage tenure came to be a wide group comprehending nearly all such varieties of tenure as had lost their peculiar feudal character and had retained a mere shadow of their former obligations in the easy burden of a moderate quit-rent or even nominal return; in that class belonged the burgage tenure, the distinctive tenure of the townsman, which permitted him to hold his land by the mere payment of a fixed rent, virtually paid to himself when the group of townsmen to which he belonged had acquired their town in ferm.¹

Townsmen acquired the privilege, by virtue of their membership in the community, of freely alienating and

known distinction of the *militant* and *industrial* types of society. See "Synthetic Philosophy," *Political Institutions*, chapters xvii. and xviii.

¹ For a description of socage and burgage tenures and their relations to each other, see Pollock and Maitland's *History of English Law*, vol. i., pp. 271-277.

bequeathing their holdings of land, especially if they had acquired them by purchase and not by inheritance. It was the opinion of Bracton that a burgage tenement could be bequeathed as a quasi-chattel, in which case the will and property would probably be expected to come within the jurisdiction of the ecclesiastical courts, but such was not eventually the rule established. Not only were holdings of land transferred in the town court, but some of the cities and towns established registers of wills where wills bequeathing burgages had to be enrolled; some conveyances also had to be enrolled. Moreover, the validity of local town customs as affecting the tenure of town lands was usually passed on by the town courts without serious interference from "Westminster law."¹ The most conspicuous tendency was "to treat the burgage tenement as an article of commerce; it is likened to a chattel; not only can it like a chattel be disposed of by will, but it can be sold like a chattel."² Some of the town charters relieved the townsmen of feudal burdens such as those of marriage and wardship, so that the tenure by which they held land was modified accordingly.³ Some special tenurial customs, as those of borough English, *retrait liguages* and *retrait feudal*, were confirmed. It was well established—and specially granted in some charters—that by membership in a town, a chartered borough, for a year and a day without being reclaimed by his lord, the serf became a freeman and held his land accordingly.

Such bodies of tenurial privileges must have been very

¹ See Pollock and Maitland's *History of English Law*, vol. i., pp. 328-329.

² *Ibid.*, vol. i., pp. 275-276.

³ The burgher became the guardian of his own children and might betroth them at his own pleasure; the right of widows to remarry was secured against any interference from without. Land was allowed to pass to the next heir without reverting to the lord. See Green's *Town Life in the Fifteenth Century*, vol. i., p. 199.

early in their origin; in fact, they seem to have marked the earliest differentiation of the townsmen as such from the mass of the people, for burgesses are mentioned in Domesday Book to distinguish their tenures from others, and the earliest charter after the Conquest embodies William's promise that "every child be his father's heir, after his father's day."¹

But the tenurial privileges though important in themselves are more important as elements in the life of the town groups and as marks of the townsmen's participation in it. They must have been most noteworthy in towns in which there were lands and tenements under several seigneurs²; in such towns the peculiar tenurial privileges granted by any one of them would be effective only in the cases of his own tenants, and would serve to distinguish them sharply from the tenants of others. Similarity of tenure peculiar to the group of tenants also served to make the group more compact within itself, while it separated it more completely from other groups—two processes equally essential in the crystallization of corporate life and structure.³

3. *Mercantile Privileges.*—To the burgesses of mediæval English towns the most agreeable feature of the charters granted to them was their concession of trading privileges. As the towns were the seats of the commercial and industrial development that followed the establishment of order and security in the eleventh century, the older restraints on the production and exchange of commodities were most irksome to the townsmen, and the removal of

¹ Charters of London, Stubbs's *Select Charters*, p. 83.

² Some of the English towns of the middle ages were singularly lacking in homogeneity. One of the best examples was the ancient city of Winchester; for a description of the several groups of tenants and conflicting jurisdictions in that city, see Green's *Town Life in the Fifteenth Century*, vol. i., pp. 321-325.

³ On the general subject of tenurial privileges, see Pollock and Maitland's *History of English Law*, vol. i., pp. 629-634.

them most welcome. Such privileges were acquired piecemeal and without order or system. In Domesday Book it is recorded that the men of Dover, in consideration of a payment to the king, enjoyed freedom of tolls throughout England.¹ Sometimes the freedom from tolls extended to the continental dominions of the English kings. In general, however, the important English towns each followed the early example of Dover by purchasing exemption by charter from the many kinds of tolls and fees that hampered trading in all parts of England.² As an incident to the grant of exemptions, permission was usually added to have a merchant gild, the necessary organization for the enjoyment of the privileges. Very many small towns secured the privilege of holding markets without further privileges; such towns hardly attained the status of corporations.

The exercise of such privileges had primarily to do with the relations of the inhabitants of one town with those of another. Their significance in this study lies in the fact that they were incidental to participation in the common, organized life of the towns. Commerce was inter-municipal. The town was the unit through which the merchant acted in his dealings not only in England but in foreign countries. The municipal unit was to be superseded by the national unit hardly before the sixteenth century. The law recognized and sanctioned the rights and duties flowing from the use of the local unit. {From the standpoint of commerce England was a federation of municipalities. If the merchant enjoyed his

¹ See Henry Ellis' *General Introduction to Domesday Book*, vol. i., pp. 256-257.

² As an example, the comprehensive exemption found in a charter granted to Carlisle may be quoted: "Et quod ipsi et eorum hæredes et successores, cives civitatis prædictæ, quieti sint de theolonis, pontagis, passagis, lastagis, kaiagis, cariagis, muragis et stallagis, de rebus et mercimoniis suis, per totum regnum regis. . . ." The charter is found quoted in Madox's *Firma Burgi*, p. 243, note (9).

privileges in other towns, it was because he was permitted to rely on the charter of his own town in demanding them; if his privileges were denied him, he could fall back on his own town to obtain redress. Each townsman was responsible, not only for his own acts, but for those of his fellow-townsmen, if damage should be done by failure to respect a "foreigner's" chartered privileges. Of so great force was the grant of mercantile privileges in the evolution of municipal corporations in England that in the sixteenth century the power of holding a merchant-gild was gravely asserted to be a legal test of their existence.¹

4. *Municipal Courts.*—It hardly needed the keen sense of the mediæval English burgher to discover that the exercise of a power in society is conditioned largely by its judicial interpretation and protection. If he and his fellow-townsmen were to have their social relations to one another and to the rest of the world removed from the system of social relations generally prevailing about them, and to have them hardened into a new and peculiar set of institutions, they must be judicially protected as far as possible by reliance on the coercive power of society. The tendency of independent group-life to complete itself has already been noted; if once a body of powers has been conferred on a group of persons, and if they be of sufficient volume and strength to survive in the group and conserve its identity as a group, they invariably exhibit a tendency to attract other powers, and particularly such as are incidental to the exercise of those already conferred and necessary to their full enjoyment. In that tendency lies a general explanation of the growth in English mediæval towns of municipal courts (or, more properly, the adaptation of existing courts to town

¹ Charles Gross, *The Gild Merchant*, vol. i., p. 98, and authorities cited in note (2). On the general subject of mercantile privileges, see Pollock and Maitland's *History of English Law*, vol. i., pp. 634-635.

purposes) with their peculiarities of procedure and exclusive jurisdiction, involving the limitation of the jurisdiction of other courts. "There can hardly exist a body of men permanently united by any common interest that will not make for itself a court of justice if it be left for a few years to its own devices."¹

Local courts had been a part of the tribal system of the Saxons transplanted by them into Britain. When the feudal system had developed, the courts were kept intact, but were brought under the control of the governing class; fortunately the element of participation by the governed in the administration of the courts through the medium of juries had been largely preserved. When the feudal control of the system came to be superseded by that of burghal corporations, nearly all that was necessary was the substitution of the mayor, bailiff or other town officer for the feudal lord, or his steward, bailiff or other representative. Accordingly the town charters did not often contain grants of the power of holding or presiding over town courts; the grant of that power seemed to be implied in the grant of others more substantial. If a town were conveyed to a body of tenants in ferm, part of what was conveyed was the issues or revenue of its local courts; the inference was very clear that the issues should be collected by a town officer; for that reason, doubtless, when the abbot of St. Edmunds conceded Bury St. Edmunds in ferm to his men, he found it necessary to reserve the power of holding the manor court.² In general the baronage, lay and ecclesiastical, were very tenacious of judicial privileges, as in fact of most others; it was the communities of tenants holding directly from the king that most easily acquired the control of their own courts. Some of the manorial courts held by the nobility

¹ Pollock and Maitland, *History of English Law*, vol. i., p. 652.

² Green, *Town Life in the Fifteenth Century*, vol. i., pp. 296-298.

have continued in existence even until the present century.

Very frequently it was conceded in the town charters that townsmen (except moneyers and royal servants) should not be compelled to "plead without the walls" of their town except in pleas involving tenements held by them outside; and that if cause of action arose within a town, pleas founded on it should be tried in the town court. The jurisdiction of the town courts, however, was expanded rather on its civil than on its criminal side, the latter extending no higher than *infangthef* and *ut-fangthef*; on its civil side, the county court was virtually superseded by the town court. New forms of procedure were also introduced, the most notable being the reintroduction of trial by compurgation in place of the trial by battle earlier substituted by the Normans; and even after trial by jury had become the rule outside the towns, compurgation was still resorted to inside them. The jealousy of the county administration also appeared in the quite usual provision that the town should have the return of all writs served within it; the authority of the sheriff in the service of process yielded to that of the town constable at the town limits. Substantially the same result was accomplished in a few cases by raising a few towns to the dignity of counties, as in the cases of London, York and Bristol,—or more truly, by giving the town control over the county government in the same way in which it already had control of its own government; in such cases, the sheriff became an officer in the choice of the townsmen and the inhabitants of the county became, to some extent, subjects of the town community; in some cases the jurisdiction of the town courts was extended over a "suburban" district outside of the original town limits.

But the growth of the town courts and of their peculiar procedure, and the readjustment of jurisdiction in respect

to territory, subject-matter and suitors were rather effects than causes of the character of the towns; the absorption of the organs of judicial interpretation and protection was a secondary movement in the growth of town corporations; the primary movement was in the accumulation of a body of social powers and privileges. The former served, however, to intensify the latter and to give fixity and stability to its results.¹

III—Internal Growth of Towns

In the preceding sub-chapter have been considered the powers concerning chiefly the antagonistic external relations of the townsmen, the relations due to their increasing separation from the royal central power and feudal system, and their relations to inhabitants of other towns. Along with antagonism to the rest of the society in which a corporate group is found, it is essential to the nature of the group as a corporation that it be internally organized, that interrelations not only be sustained by the members, but that they also be orderly and settled, and given fixity and stability in corporate institutions. A "privileged order" is a group distinguished by the peculiar relations sustained by its members to the other members of the society of which it forms a part, but it is not a corporation, because it lacks the internal organization; the interrelations of the members of such an order are determined not by organized institutions of the order, but merely by their status in the wider society. The features of English towns now to be considered, having to do chiefly with their internal structure, may be distributed under three heads: (1) Town constitution, (2) Town legislation and (3) Taxation.

1. *Town Constitution.*—There was so great variety and

¹ See, on the general subject of municipal courts, Pollock and Maitland's *History of English Law*, vol. i., pp. 627-629, under the head of "Jurisdictional Privileges."

such inequality of development in the framework of the town governments that the general outlines alone can be given here. A comprehensive and detailed study of the subject would require an examination of the constitution of each of the many towns during the four centuries of their development. It may at first thought be surprising that the earlier town charters provided no system of town government, though in a few cases permission was given the *cives*, *burgences* or *homines* to elect freely their chief officer to take the place of the former representative of the king or lord. The reason doubtless was that a rudimentary system of local government was already in existence, inherited from the older system of county, hundred and township, with its feudal modifications, and was simply adapted to the use of the town as a self-governing unit. The charters of full incorporation, those containing a more detailed plan of constitution, date from the reign of Henry VI., the middle of the fifteenth century, } 1450 when the town corporations had become separated from the general body of townsmen; the early privileges of the towns involved no great change in their institutions; the later ones were clearly exceptional in the close governing body as compared with the rest of the town and needed the legal protection of a distinct definition by charter.

The commutation of the issues of a town in the *firma burgi* does not appear to have resulted in making immediately elective by the town the officers that had formerly represented the sheriff; the bailiff appears to have continued to be appointed by the sheriff for the purpose, if not for that of collecting the issues of the town, of presiding over its courts and assemblies. It is accounted by the historian a veritable revolution when the election of the chief officer of the town was either conceded to the town or more or less forcibly seized by it. The new elective officer was almost invariably called the mayor, and the body of townsmen under him was frequently

called the *commune*—words that seem to indicate the influence of French towns on those in England. The period of this movement in the direction of self-government was the reigns of Richard I. and John, the end of the twelfth century, about a century after the beginning of the era of town charters.¹ Substantially the same result was accomplished in some towns by the concession of the election of the bailiff, or in small towns by leaving the town-reeve, already an elective office, free from the influence of a bailiff or other representative of the central power. The mayor had at first a small body of assistants between him and the body of electors, sometimes called bailiffs, and probably older royal officers who had not been superseded by him but had simply been subordinated to him.² Some of the towns were composed of wards, originally probably separate townships united in a hundred, that retained their older organization under aldermen elected by them; a body of assistants was thus formed of the aldermen; later, towns were divided into wards for the purpose of supplying the body of aldermen or for mere police purposes; at all events, the body of assistants or advisers was usually composed of representatives of geographical divisions of the towns.³ Thus

¹ The *communa* was recognized in London by a national council in 1191, and the mayor is mentioned at the same time. In 1215, John granted or confirmed the right to elect a mayor annually. In the rolls of the reign of John, Bristol, York, Ipswich, London, Lynn, Northampton, Norwich, Oxford and Winchester are mentioned as having mayors. "The development . . . of the idea of municipal completeness as represented by a mayor and aldermen may be placed at the very beginning of the thirteenth century."—Stubbs, *Constitutional History of England*, vol. iii., p. 580.

² In Norwich the town government was long presided over by four bailiffs, until, in 1403, a mayor was set over them.

³ In the thirteenth century, London was governed by a mayor, two sheriffs and twenty-five aldermen of wards. The mayor was elected by the aldermen, or by the aldermen and magnates of the city, and then approved by the Crown. The aldermen were chosen by the citizens or commons of the wards. The sheriffs were probably elected by the mayor and court of

there were officers for special town purposes, such as the clerk of the market, appointed by the mayor either alone or in conjunction with the body of assistants. When a town "became a county" (as it is usually expressed) there was no radical change in the institutions of the town; it is better to say that the county became subject to the town, the principal result of the change being that the town secured the appointment of the sheriff and consequently the control of the county court.

At the end of the first century after the beginning of the positive growth of town life the element of self-government with four or six *probi homines* of each ward, and were approved by the Crown. The mayors were at first elected for terms of one year, though they served for more than one term until 1329, when annual changes began. In 1229, it was provided that sheriffs should serve for no more than two years together. After 1285 the aldermen were assisted by elected councillors. (Stubbs, *Constitutional History of England*, vol. iii., pp. 587-588.) Short terms were characteristic of the mayor's office in most towns. London was one of the cities in which the wards were survivals of older units and difficult to amalgamate into a city. In cities such as London, where the wards were so distinct in their interests, the aldermen were not usually a body close to the mayor in his administration; they were closer to their wards; accordingly a small number of sheriffs, bailiffs or comburgesses are sometimes found between the mayor and aldermen. In fact, the court of aldermen vacillated between a mayor's cabinet and a body of representatives of federated wards. There were many ways of choosing mayors and sheriffs; sometimes they were nominated by their predecessors and elected by the aldermen or council (or by a specially chosen body that had not hardened into a permanent council); sometimes the choice of the official bodies was submitted for ratification to a popular body in folk-moot; sometimes the mayor was virtually one of the aldermen, and performed his duties as such in one of the wards. When the council became a fixed institution, past-mayors became members of the body by virtue of having served in the mayoral office.

The shifting relations of the aldermen are shown in the history of Leicester where in 1464 there were twenty-four "comburgesses or mayor's brethren," and a court of common council, empowered to elect the mayor. In 1484, the twenty-four comburgesses or mayor's brethren took the name of aldermen and the town was divided into twelve wards. Five years afterwards the mayor, twenty-four aldermen and forty-eight councillors formed a corporation.—Stubbs, *Constitutional History of England*, vol. iii., p. 601. This movement was thus the reverse of that in London.

ernment implied chiefly in the election of the mayor was acquired; at the end of the second century a movement of more importance had been consummated in many of the towns—the growth of the council. It has been the habit to assume that English mediæval towns were ideal democracies. But even in the primitive township and hundred organizations there was a strong aristocratic element, and in the later independent towns it became even stronger.¹ The four men who accompanied the reeve to the hundred court were not mere representatives of the township; they were *probi homines*. In the towns the chief burgesses, or capital portmen, soon emerged above the common level of their fellow-townsmen. The king or lord was in the habit of holding the wealthier citizens responsible for the fulfilment by the town of its obligations. During the twelfth and thirteenth centuries, however, the towns were fairly democratic; during the fourteenth century there was a steady decline in town democracy and the charters of the fifteenth century evidence the organization of the town aristocracies in technical oligarchical corporations. The early electorate had consisted of the inhabitants bearing scot and lot with their fellows; in their annual moots for legislative and judicial purposes, they had all come together to exercise their public duties as townsmen, even if their deliberations were presided over by the bailiff of king or lord. As the administration of the town government became more difficult by reason of the growth in business and population, the town-meeting became inefficient. When deprived of the function of initiating measures, the work of the official was still brought before the periodical

¹ "The growth of the borough corporations is from the very first intimately connected with the establishment of a definitely aristocratic or definitely elective form of government. Had the one organ of the borough been a folk-moot, the corporate, the ideal, borough would have come to light but slowly or never."—Pollock and Maitland, *History of English Law*, vol. i., pp. 668–669.

meetings of townsmen for approval. A final step was taken when the popular meeting was replaced in many towns by that of a representative body, the council or common council. The mayor, aldermen and common council became the type of the town government.¹ In some cases the council seems to have been originated by the mayor and aldermen, representing the aristocratic element, for the purpose of obtaining the popular sanction of their acts necessary to their validity; in such cases the body was composed of principal citizens summoned by the mayor; in other cases, however, the council seems to have been demanded by the common people for the protection of their rights.² Even in towns in which the council did not become one of the town institutions the people, though deprived of actual organic participation in the town government, yet prevented actual invasion of their rights by resort to force, as particularly in places where the use of much common property (pasture-land and the like) was enjoyed by the townsmen. By degrees the election of the mayor was lost to the body of citizens, and the board of aldermen and common council became close bodies, their members holding their offices for life and filling their vacancies by co-optation. By the end of the fifteenth century the transformation was generally complete.³ The governing body came to be considered in law and fact the corporation,⁴ while the community, the body of town inhabitants, became a body subject to

¹ "Finally . . . there is a common tendency towards the general type of an elective chief magistrate, with a permanent staff of assistant magistrates, and a wider body of representative councillors—in other words, to the system of mayor, aldermen and common council, which with many variations in detail was the common type to which the charter of incorporation gave the full legal status."—Stubbs, *Constitutional History of England*, vol. iii., p. 604.

² Green, *Town Life in the Fifteenth Century*, vol. ii., pp. 280–281.

³ For the general subject of the Town Council, see Green's *Town Life in the Fifteenth Century*, vol. ii., chapters xi. to xvi.

⁴ Brady, *Treatise of English Boroughs*.

VOL. I—8.

the government of the corporation. To be free of a corporation now meant not to be a participant in the organic activity of the corporation, the governing body of the town, but merely to enjoy the advantages of life in the town under the control of the corporation.¹ Thus the movement in ecclesiastical corporations was duplicated in the towns. Monks had originally been merely Christians, and the monastery a corporate organization of them; eventually they became priests, and monastic bodies became organizations of governing bodies in the church; likewise English town corporations, from being substantially organizations of townsmen became organizations of their governing bodies.²

2. *Town Legislation.*—If the earlier town charters contained no provisions for the framework of town government, they were equally silent on the limitations of the power of enacting by-laws³ and other measures of local self-government. It was recognized and well settled as a principle that no town legislative might invade the limits of the royal or parliamentary law-making power, but the test was not often positively applied, except in London and the other large cities; however, the fear that the town charter or the powers granted by it might be summarily taken away by the king, if the limits of local necessity should be exceeded by the legislative body, acted as a deterrent. It was ordinarily perilous for a citizen to invoke the aid of the king or his courts to determine whether the town had exceeded its legislative powers; he would do it only in most flagrant cases. To

¹ See Green's *Town Life in the Fifteenth Century*, vol. ii., chapter ix., on "The Town Democracy," and chapter x. on "The Town Oligarchy." See also an article by Charles W. Colby in the *English Historical Review*, vol. v., pp. 633-653.

² See Pollock and Maitland's *History of English Law*, vol. i., pp. 641-644, under the head of "Election of Officers and Constitution of the Borough."

³ The word *by* in *by-laws* is said to be the Danish word *by*, meaning *town*.

get justice from a royal court was expensive, and if given against a town or its officers was likely to be followed by a punishment quite out of proportion to the offence and likely to react on the complainant.

The limits of legislation were determined rather by the body of customs guaranteed to the towns or of powers granted to them in their charters. The customs were not always definitely known and it was virtually a matter of legislation to determine whether a particular custom existed. The actual extent of a custom known to exist had to be determined, and it was not always easy to distinguish between interpreting customs and making laws. In the expanding life of the towns it often became necessary to apply an old custom to new conditions—a necessity very likely to justify the virtual enactment of laws. The town certainly had and exercised the implied power to enforce and protect by appropriate and necessary legislation the powers positively granted to it by charter. Of course, town legislation was liable to be superseded at any time by a royal statute or act of Parliament, but as a matter of historical fact, the towns suffered very little disturbance from that source before the beginning of the thirteenth century.¹

3. *Taxation*.—The financial burdens of the inhabitants of the towns were of two general classes: those involved in their participation in the town life, and those involved in their status as subjects of the King of England. The town's governmental institutions and its public industries were usually intended to be self-sustained through the medium of fees and tolls or through application to their support of the segregated revenues of parcels of property. The town-ferm was nearly always partly paid from the revenues of property held by the town for the purpose. The town-wall was kept in repair by certain townsmen in

¹ See paragraphs on "By-Laws and Self-Government," in Pollock and Maitland's *History of English Law*, vol. i., pp. 644-646.

return for their holding certain lands and tenements. Official salaries were few and small and universally supplemented by fees. The principal tolls to which the town was entitled were passage, pontage, lastage, stallage, bothage, ewage, tronage and scavage. In the event of an actual deficit, however, the townsmen were required to contribute in proportion to their ability. The entire control of the matter of taxation for local purposes was in the town, except, it seems, that it could not levy new tolls or arbitrarily increase old ones, and that it could not levy a tax for a new project, such as paving a street, without a royal grant of permission.

The principal financial burdens, outside of those incident to the local government, were the result of the king's levying tallages, fines and amercements. The central power levied them on the towns as units and left their distribution among the individual townsmen to the town authorities; in the event of a failure on the part of the townsmen to determine the several proportions of the levy that each should pay, the central authorities stood ready to make the distribution through the agency of the sheriff or of a jury or commission appointed for the purpose; a more expeditious procedure was usually resorted to, however, in the forcible collection of the amount due (especially if it were a fine or amercement) from a few of the wealthier townsmen, who were to later recoup the payments from their fellows as they might. When the period of parliamentary grants of subsidies arrived, the peculiar nature of the wealth of the towns was recognized in their grant of a larger percentage of personal property than was levied on rural taxpayers. The important feature of these taxes as of those for local purposes was that they were collected without the intrusion of outside officers; there was an element of freedom and self-government in the absence of the royal tax-gatherer.¹

¹ See paragraphs on "Self-Taxing Powers," in Pollock and Maitland's *History of English Law*, vol. i., pp. 646-648.

IV—Decay of Towns

The preceding sketch of town institutions and the social activity that was exercised under their control and guidance, imperfect as it must be, is intended to exhibit the important features of the towns in their positive development; the elements of decadence have not been considered, unless some such elements are necessarily involved in the growth of the oligarchical town corporation. The period of growth of the towns as organic units ended in the fifteenth century; though the activity of the towns has since continued to expand without serious interruption, the expansion has taken place not in the towns as local units, but rather in England as a national unit. It has been suggested that corporations are provisional social structures intended to comprehend expanding social activity until the state, the wider and deeper organization of society, may be able to comprehend it. The English towns had their body of peculiar customs and social constitutions for maintaining and enforcing them, because the state as organized was not able to comprehend all English social life. The central power, emerging from its feudal environment, was sufficiently occupied in maintaining a bare existence; it was not able to comprehend even the social activity already in existence, and its administrative system tended strongly to assume feudal attributes; much less was it able to assimilate the new elements of social life, for the most part mercantile and industrial activity, which found their *situs* in the towns. The king had been far more favorable to the towns in granting them chartered rights than had the nobility or churchmen, undoubtedly because of the double relation of king and feudal seigneur that he sustained to them; if the townsmen ceased to be his vassals, they still remained his subjects; if bishop or abbot released his townsmen from their feudal obligations, there was no

retracing the step.¹ It was always recognized that the king's position relative to that of the nobility was strengthened by liberality with the towns, even though they were accorded much independence; it not only subtracted power from the nobility, but gave the king a most abundant source of revenue.²

Within the towns themselves and in their interrelations were movements that reduced their social isolation—and most effective among them, the affiliation of towns. The body of customary and chartered rights and powers and the necessary social structure for their exercise that prevailed in a few of the larger and more favored cities were used as models by other towns affiliated to them.³ Thus

¹ For a detailed tracing of the comparative growth of liberty in the several classes of English towns, see Green's *Town Life in the Fifteenth Century*, vol. i.: "Towns on Royal Demesne," pp. 226-249; "Towns on Feudal Estates," pp. 250-276; "Towns on Church Estates," pp. 277-308.

² Many charters were granted *ad amendationem civitatis* or *pro melioratione civitatis*, as those to London by Henry II., to Winchester and Lincoln by Richard I., to London and Yarmouth by John, and others. See Madox, *Firma Burgi*, p. 243. The language used in the charter granted by Edward II. to Carlisle in the ninth year of his reign is as follows: "Pro melioratione ejusdem civitatis, et ut cives ejusdem civitatis in eadem civitate suis negotiationibus sub majori tranquillitate et quiete intendere valiant imposterum, et ad civitatem illam muniendam et defendendam eo amplius animentur si ipsa civitas ipsorum custodiæ specialiter committeretur . . ." The charter is found as an appendix in Brady's *English Boroughs*.

³ In the charter given by John to the burgesses of Yarmouth in the ninth year of his reign, the language is as follows: "Concessimus etiam eis gildam mercatoriam, et quod tenas, et tenuras, vadia sua, et debita sua, omnia juste habeant quicunque eis debeat, et de terris suis et tenuris quæ infra burgum prædictum sunt rectum eis teneatur, secundum legem et consuetudinem burgi Oxon. . . ." The charter is found as an appendix (page 9) in Brady's *Historical Treatise of Cities and Boroughs*. In another charter of John, that given by him to Hartlepool in the second year of his reign, the language is more general: "Sciatis nos concessisse et hac præsentī carta nostra confirmasse hominibus de Hertlepole quod sint liberi burgenses, et quod habeant easdem libertates et leges in villa sua de Hertlepole quas burgenses nostri de Novo Castello Super Tinam habent in villa sua de Nova Castello." This charter is also found as an appendix in Brady, *op. cit.* (p. 16).

London, Oxford, York, Winchester and Hastings became models for many other towns in England; Bristol, Dublin and Kilkenny, for towns in Ireland; Hereford and Rhuddlan, for towns in Scotland. Sometimes the model town had itself been constructed in imitation of another town, as Rhuddlan in imitation of Hereford; and Dublin, of Bristol. Even when a town was not mentioned as a model in a charter, its charter had often been closely copied.¹ Sometimes charters recited that the king had allowed a town to make its choice of the town it would use for a model. In some cases one town would serve as a model in one particular, and another town in other particulars; in some cases only one feature of a town's liberties was imitated. Ordinarily, when one town had been granted the liberties of another town, it demanded (as a matter of right—sometimes specifically granted) and obtained a copy of the model town's charter to aid in the determination of its rights and duties²; if afterwards doubts arose in the interpretation of its constitution, it was at liberty to get advice and information from the model town. Thus, even if there was room for many local peculiarities in the several towns, the tendency of affiliation was to produce uniformity.³ Again,

¹ As the charter of Richard I. to Winchester was closely copied in the charter given to Gloucester in 1199.

² There seems to have been some friction between Rhuddlan and Hereford on this question. "The men of Dousselane (Rhuddlan), in North Wales, presented a petition to Henry II., who, in compliance with their request, sent a royal mandate to his chief bailiff at Hereford, commanding him to search into the laws of the town and frame them into a regular code, so that when required, some body of precedents might be produced without delay. Accordingly, a council was convened, composed of the principal citizens, and from this meeting originated the ancient custom-book, containing the laws by which the city of Hereford was governed for many centuries."—Charles W. Colby, in article on "The Growth of Oligarchy in English Towns," *English Historical Review*, vol. v., p. 638.

³ See "Affiliation of Mediæval Boroughs," by Charles Gross, published as Appendix E in vol. i. of his *Gild Merchant*.

the commercial intercommunication of towns rapidly increased and the contact of citizens of different towns in markets and fairs tended to obliterate the divergences of local customs. The impetus given to the commerce of foreign merchants in England in the reigns of the three Edwards exerted a similar influence; the presence of the foreigners aroused in the tradesmen of different English towns a sense of community of interests.

In the administrative reforms of Henry I. and Henry II., the towns were regarded largely as distinct units. Before the middle of the thirteenth century the statutes that affected the rights and duties of all townsmen comprehensively were few. With Edward I., however, began a series of statutes directed to the concerns of merchants (another word for townsmen) generally.

"Formerly there had been a vast number of separate local jurisdictions, each united by a similar tie to the king or head, but without any real connection with one another; now the towns in the different parts of the Country were enabled to realize the interests they had in common, to get over some of the old exclusiveness, and to join in demanding measures for the common good of their class in all parts of the realm."¹

During the three centuries before the accession of the Tudors the social and legal status of burghers had steadily approached uniformity; in the sixteenth century the townsmen had become virtually an order in English society. In the fifteenth century, if not earlier, the conception of a *liber burgus* had become so definite that a charter granting merely the right to be a *liber burgus* conveyed a settled and determinate body of rights.² And it

¹ Cunningham, *Growth of English Trade and Industry*, vol. i., p. 282.

² In the charter of John to Lynn in the fifth year of his reign, the granter says: "Noveritis nos ad instantium et petitionem venerabilis patris nostri Johannis Norwicensis episcopi secundi, concessisse et hac presenti carta nostra confirmasse quod villa de Lenna sit *liber burgus* in perpetuum, et habeat omnes libertates et liberas consuetudines quas *liberi burgi* habent, om-

was only when the townsmen had become rather a stratum in English society than a federation of units; when, as Cunningham puts it, the sections of society had become horizontal instead of vertical, that they took an active part in securing the larger liberties of the English people; their previous attitude had been negative rather than positive; their influence on the government had been exerted to keep it from interfering with the towns; their desire had been to protect their own interests. When at the end of the thirteenth century the royal power had sought to make itself more nearly comprehensive of English society by expanding the great council into a parliament, it had found two classes of social units without representation, the administrative counties of the agricultural population and the numerous corporate towns of the merchants and manufacturers,—very much as the Pope, after monasticism had developed, found his Church divided into administrative bishoprics and monasteries. But the inevitable result of the summoning to Parliament of representatives from the towns was to break down the barriers of corporate town life. The rights enjoyed by townsmen ceased to be privileges because no longer exceptional; the only exceptional rights remaining were those of the close town governing bodies, which came to be very properly contrasted with the rights of the townsmen in general; the corporation seemed to be a fit framework for town life in general only so long as it was

nibus salvis ipsi episcopo et successoribus suis et Willielmo Consiti Arundell et hæridibus suis libertatibus et consuetudinibus quas ipsi in pædicta villa antiquitus habuerunt." The charter is found in Brady's *Historical Treatise of Cities and Boroughs*, Appendix, p. 16.

Thus also Edward III. granted to Quinborowe, in the forty-second year of his reign, "that the town should be a perpetual and free borough and the men of it be burgesses, and have all the liberties and free customs belonging to a free borough."—See *Report of Commissioners on Municipal Corporations in England and Wales* (1835), p. 823.

See also Stubbs's *Constitutional History of England*, vol iii., p. 597.

exceptional, in its rights and duties, in the larger volume of national life; when the town life came to be correlated with the life that surrounded it, the corporate shell shrunk until it included barely more than the privileged life within the town itself. The main-spring of corporations is the private interest of the persons organized in them; when the private interest comes to be reposed in a larger unit, the corporation is destroyed or shrinks by the exclusion of those whose interest has been transferred. It is suggestive that the fullness of town life, placed by Cunningham at the end of the thirteenth and beginning of the fourteenth century, was coincidental with the beginning of the modern parliamentary system, and that the decay of all the town powers seems to have culminated in the reign of Richard II., when the system had been fully established.¹ It is suggestive in the same connection that the fifteenth century was characterized by the codification of town statutes in "black books," "red books," and "white books," and by the greater fullness of town charters; laws and chartered rights could not rely for protection, either against the central government or against the townsmen, on public sentiment; exceptional rights are strictly construed and their record must be close at hand. The fifteenth century, too, was the century of struggles between town classes, between rich and poor; the compilations of laws and the more definite charters were for the defence of the rich governing body, the legatees of the older corporate town powers.

The decay of corporate town life, then, was not equivalent to a decay of town life in the larger sense. It is a characteristic of corporations, though theoretically it is difficult to assign a reason for it, that when a wider social unit is in process of realization and is seeking to absorb the activity of a narrower corporate unit, the corporation

¹ Cunningham, *Growth of English Industry and Commerce*, pp. 371-372; Stubbs, *Constitutional History of England*, vol. iii., p. 578.

can be used with little success as an administrative organ. An effort to make such use of corporations is likely to result in Jesuitism. The history of English towns after the period of the fifteenth and sixteenth centuries, when nationality was attained, is in a succession of acts by which the actual work of government is transferred from the obsolescent corporations to county authorities, justices of the peace, parish authorities, commissions and boards. Whether unfortunately or not, when England attained nationality, it was organized in a monarchical form, or at least in a system of government in which the monarchical element predominated. In resisting the establishment of constitutional government, the hollow shells of town government still existing in the close corporations of the towns were used by the monarchy largely as the means of maintaining an artificial and corrupt control over the House of Commons. Lawyers even discovered that the test of the corporate character of a town was its power to send members to Parliament.¹ From the reign of Henry VIII. to the Revolution many of the older charters were modified and new ones granted to perpetuate and make even closer the close type of the town corporation; during the eighteenth century and especially in the long reign of George III., extending into the nineteenth century, there was no improvement;

“there is little reason to doubt that the form given to the governing classes, as well as the limitation of the burgurship, during this period was adopted for the purpose of influencing the choice, or nomination, of members of Parliament.”²

“The importance which the privilege of electing members of Parliament had conferred upon corporate towns, or rather upon the governing bodies there, and the rewards for political services, which were brought within the reach of the ruling

¹ “A towne . . . is called a burgh, because it sendeth burgesses to Parliament.”—Coke on Littleton, 1086.

² *Report of Municipal Corporations Commission* (1835), p. 17.

corporators, had caused this function to be considered in many places as the sole object of their institution. In some boroughs this right had survived all other traces of municipal authority."¹

"It had become customary not to rely on the municipal corporations for exercising the powers incident to good municipal government. The powers granted by local acts of Parliament for various purposes, had been from time to time conferred, not upon the municipal officers, but upon trustees or commissioners distinct from them; so that often the corporations had hardly any duties to perform. They had the nominal government of the town; but the efficient duties, and the responsibility, had been transferred to other hands."²

The office of high steward (or patron) of the borough sprung up to make a close connecting link between the corporation and the king and nobility; his function was virtually to nominate its members of Parliament. By the Reform Act of 1832 fifty-six of the nomination or "rotten" boroughs were denuded of the power to return members; thirty boroughs were deprived of one member each, and two of two members; sixty-four seats were distributed among other town populations; and the county representation was increased by sixty-five seats; thus, to some extent, the arbitrary element in parliamentary representation, a result of the prostitution of obsolete town corporations to the support of a corrupt monarchy, was removed.³

In 1835, however, the Commissioners on Municipal Corporations in England and Wales, appointed the year previous, found, as nearly as it could determine, two hundred and forty-six municipal corporations in England and Wales. In general, they consisted of a mayor, alder-

¹ *Report of Municipal Corporations Commission* (1835), p. 34.

² *Ibid.*, p. 17.

³ Not all of the boroughs were "incorporated," but the distinction between corporated and uncorporated boroughs was purely technical.

men and common council, called collectively the town council; the mayor was elected annually from among the aldermen or common council by one or both of the bodies; the councillors were elected for life by the common council or aldermen; the aldermen were elected by the aldermen from among the common councillors, or past-mayors. In the community was a body of freemen, admitted to the franchise by vote of the close corporation; the right to the freedom might be derived from (*a*) birth of a freeman,¹ (*b*) marriage to a freeman's widow or daughter or (*c*) servitude through apprenticeship to a freeman; the freedom might also be conferred by (*d*) gift or purchase.² With few exceptions the corporations were making no effort to provide efficient local government. They existed quite independently of the communities in which they were placed. Even when there was a popular body in the corporation, it consisted of only a small body of freemen far from being representative of the society of the town. Their chief function being the election of members of Parliament, they were little more than political machines managed and controlled for partisan purposes. The acquisition of the franchise was inspired, not by a desire to participate in local self-government, but by the hope of sharing in the profits of election. The choice of incompetent town officers, careless in the performance of their duties, resulted from the partisan control of the municipal elections. The business of the corporation was transacted in secrecy, sometimes enjoined by oath; the wholesome restraint of publicity was absent. The mayor's office was neglected and the recorder's viciously filled; all offices were regarded merely as

¹ In some cases, the right was limited to children born in the borough, but in others extended to children wherever born; again, it was often confined to the children (or first child) born after the admission of the parent to the franchise; and there were many other such provisions.

² In some cases, the freedom might be given or sold only to residents, but most frequently to non-residents as well.

matters of patronage, and some of them were filled by nonresidents. Even the privileges of schools and hospitals were distributed for partisan purposes. The criminal jurisdiction of the town courts was defective and their personnel unworthy. The revenues of the town were frequently derived from improper sources, being the price secured by the sale of their political power. The public property of the towns was let to corporators at scandalously low rents or otherwise corruptly used for their own profit. Corporate funds and revenues were not devoted to municipal purposes, or, if so, with shameful waste and carelessness; in fact, corporate property was not viewed as held in trust for the public; even funds and taxes required by law to be used for specific charitable or other public purposes were shamefully used by corporators for their private enrichment. Exemption of corporators or freemen from tolls and other public obligations gave rise to grievous inequalities. Fining citizens for refusal to accept onerous public offices was regarded as a legitimate source of corporate revenue. In many towns there was no corporate income and the public expenses were borne by the patron or parliamentary members of the town; in others that had sources of income, their issues were absorbed in salaries and the entertainment of the town council and its friends. Civil and criminal justice failed to be administered in the courts because all jurors were freemen and would not antagonize fellow-freemen by adverse findings; the jails were not properly maintained, and the insufficiency of the police force in some towns had to be remedied through local acts or the employment of private watchmen by citizens. In consequence of the anomalous position of the corporations, there was widespread discontent among the people.¹

The report of the commission was followed by the

¹ See *Report of Commissioners on Municipal Corporations in England and Wales*, 1835.

enactment of the Municipal Corporations Act of 1835, providing,

“ that so much of all laws, statutes, and usages, and so much of all royal and other charters, grants and letters patent . . . in force relating to the several boroughs [in England and Wales, with the exception of the City of London], or to the inhabitants thereof, or the several . . . bodies corporate [therein] as are inconsistent with or contrary to the provisions of this act, . . . be repealed and annulled.”

The act also provided, though it retained the structure of the old corporations, that it should be uniform in all boroughs (except as to the number of aldermen and councillors, the former, however, being in all cases one third the number of the latter) and should be designated as the “Mayor, Aldermen and Burgesses” of the town; the mayor should be selected annually by the aldermen and councillors from among their number; the aldermen, from four to sixteen in number, for terms of six years (one half going out of office every three years but re-eligible) by the councillors from among themselves or citizens qualified to be councillors; the councillors, from twelve to forty-eight in number (with a small property qualification), annually for terms of three years (one third going out of office every year but re-eligible), by resident householders having paid poor-rates for three years; the rights of existing freemen were preserved for their lives but their exclusive franchise was destroyed and they were to have no successors.¹ By the measure, “second in importance to the Reform Act alone,” “local self-government was effectually restored.”² The movement was virtually an

¹ 5 and 6 William IV., cap. 76.

² May, *Constitutional History of England*, vol. ii., p. 468.

The exceptional and privileged character of town corporations was virtually abolished by the following provision: “And whereas sundry towns

abolition of municipal corporations and the substitution for them of sub-governmental bodies, lacking in most of the essential attributes of corporations and deserving to be considered rather as organs of a nationally organised society.¹

It is worthy of note that when municipalities of England came to be reduced to harmony with the wider national government of England, they were permitted to retain, in most of its features, the form that they had acquired during their development. The mayor, aldermen and burgesses were retained. The mayor was still to be chosen by the aldermen and councillors from their own number. The governmental structure of the new municipalities was changed but little. The changes that were introduced were intended to adapt the old structure to new uses through the limitation of terms of office, the expansion of the municipal suffrage and the consequent imposition of increased responsibility. In the capacity of local corporations, the municipalities had served as organizations of local social units as long as such units enjoyed a distinct existence; in so doing they had evolved

and boroughs of England and Wales are not towns corporate, and it is expedient that several of them should be incorporated; be it enacted that if the inhabitant householders of any town or borough in England or Wales shall petition His Majesty to grant to them a charter of incorporation, it shall be lawful for His Majesty, by any such charter, if he shall see fit, by advice of his Privy Council, to grant the same, to extend to the inhabitants of any such town or borough within the district to be set forth in such charter the powers and provisions in this act contained: provided, nevertheless, that notice of any such petition, and of the time when it shall please His Majesty to order that the same be taken into consideration by his Privy Council, shall be published by royal proclamation in the *London Gazette* one month at least before such petition shall be so considered."—5 and 6 William IV., cap. 76, section 141.

¹Of course, the city of London was not affected by the movement, and, as a matter of fact, the schedules in the Municipal Corporations Act failed to include a few unimportant corporations that the commission had overlooked in their investigation; as to other corporations the act was comprehensive.

a type of structure; when it became necessary to organize the population of localities as parts of a larger and inclusive unit instead of distinct local units, the type of municipal structure that had been evolved was used for the purpose. When corporations are absorbed by the state, their structure is more likely to be made a part of that of the state than to be replaced by a new structure.

VOL. I.—9.

VI

GILDS

I—Classes of Gilds

THE term "gild" is applied to four classes of associations: (1) Frith-gilds, (2) Social-Religious gilds, (3) Ecclesiastical gilds and (4) Trade gilds, consisting of (a) Merchant gilds and (b) Craft gilds. But the four classes are not exclusive; all gilds possessed religious and social (fraternal) elements in varying degrees, and few gilds are found to have been rigidly confined to the attributes of their class; yet the classification is sufficient for purposes of description. Moreover, not all the gilds may properly be considered corporations. Corporations are essentially developed forms of association; they are not so much a particular class of associations as associations of all kinds in a particular stage of growth. The test of the corporate character is triple, involving the interrelations of the associated persons, their relations to other individual members of society and their relations to the state. Associations not only pass through preliminary stages in attaining the corporate stage, but they frequently leave the latter, either relapsing into a lower stage by the loss of corporate attributes, or advancing to a higher stage as administrative organs of the state through their absorption by it. Corporate life might be described as a portion of the stratum of associated life included between two cross-sections of it. It would consequently be quite impossible, even if profitable, to entirely separate in study

the peculiarly corporate stage from the preceding and succeeding stages of associated life. The four classes of gilds will accordingly be considered in turn.

II—Frith-Gilds and Social-Religious Gilds.

1. In the seventh and eighth centuries the social organization of the Anglo-Saxons in England had undergone many changes since the time of their immigration, but the most important change had resulted from the partial relinquishment of the family as the unit of rights and duties, and the formation above it of the state with its system of government and laws. The disintegration of the family had been hastened most by the increasing stability of the relations of the people to the soil and the consequent growth of private ownership of land. The Frith-gilds were more or less voluntary associations, not based on kinship, that partially replaced the old family unit in Anglo-Saxon society; that is substantially all that may be said of them. Security of person and property was becoming more necessary as the older social system was left behind; neither a firmly established state nor a feudal baronage was yet at hand. Perhaps there was a process of gradual disintegration of the family by the formal admission of outsiders into the family bond, but history affords no evidence of it; it seems unlikely, moreover, because the family and Frith-gild are *explicitly* contrasted in the Anglo-Saxon laws.

Two of the laws of Ive have caused much controversy among students of gilds. Whether it is safe to say that gilds existed in England in the seventh and eighth centuries depends almost entirely on the construction put upon these two laws.

"He who slays a thief must declare on oath that he slew him offending; not his gild brethren" (*gegildan*).¹ "If a man

¹ Thorpe's *Ancient Laws and Institutes of England*, "Laws of King Iwe" (16), vol. i., p. 113.

demand the 'wer' of the slain, he must declare that he slew him for a thief; not the associates (*gegildan*) of the slain nor his lord: but if he conceal it, and after a time it become known, then makes he room for an oath on behalf of the dead man, that his kindred may exculpate him."¹

What is meant by "gegildan" cannot be stated with certainty. It has been interpreted to mean minor compulsory organizations of the state, such as the township and hundred. Gross, who has given the subject probably the most careful examination, admits that he does not know what the "gegildan" were but adopts the cautious view of Schmidt that they were "gild-comrades" (*Zahlungsgenossen*)—those who mutually paid for one another.² Thorpe even suggests that the word as used in the first law cited may mean nothing more than "comrades in guilt."³ The word must mean at least mutually responsible associations not based on kinship, whether voluntary or compulsory.⁴ In the laws of Alfred the distinction between the older family organization and the new organization that was supplementing it is more apparent.

"If a man, kinless of paternal relations, fight and slay a man, and then if he have maternal relations, let them pay a third of the 'wer'; his gild-brethren a third part; for a third, let him flee."⁵ "If a man kill a man thus circumstanced, if he have no relatives, let half be paid to the king; half to his gild-brethren."⁶

¹ Thorpe's *Ancient Laws and Institutes of England*, "Laws of King Ivo" (21), vol. i., p. 117.

² "Anglo-Saxon Gilds," Appendix B of the *Gild Merchant*, pp. 177, 178.

³ *Ancient Laws and Institutes of England*, vol. i., p. 113, note (a).

⁴ The several interpretations given the word are briefly set forth in Seligman's valuable *Two Chapters on the Mediæval Guilds of England*, p. 6 note (b).

⁵ *Ibid.*, "Laws of King Alfred" (27), vol. i., p. 79.

⁶ *Ibid.*, "Laws of King Alfred" (28), vol. i., p. 81.

These laws are included with only slight changes in the code known as the Laws of Henry the First.

"Si quis autem paterna cognacione careno male pugnet ut hominem occidat, si tunc cognacionem maternam habeat, reddat ipsa terciam partem were, terciam congildones, pro tercia fugiat. Si nec maternam cognacionem habeat, reddant congildones dimidiam weram, pro dimidia fugiat vel componat. Si quis occidatur ejusmodi, secundum regi, dimidium congildonibus."¹

But the organization of the gild-brethren is still so uncertain that nothing save the quality of mutual responsibility can safely be predicted of it.

The Doms of London (*Judicia Civitatis Londoniæ*) of the reign of Æthelstan, have been somewhat extravagantly referred to as "a deed of incorporation by the prelates and reeves of the Londoners for the repression of theft and maintenance of the public peace."² They appear to be a body of laws independently ordained by the bishops and reeves of London and then given royal sanction by being annexed to the body of laws ordained by the king and his witan.³ They provided that when a thief had been slain, one fourth of the surplus of his property after the payment of the "ceap-gild" should go to the "fellowship"⁴; that each ("except the poor widow who has no 'forwyghta' nor any land") should contribute to a common fund to pay for stolen goods, and that all should "have the search in common"⁵; that if any man "who

¹ Thorpe's *Ancient Laws and Institutes of England*, "Leges Regis Henrici Primi" (lxxv., 10, § 10), vol. i., p. 580.

² Thorpe, *Diplomatarium Anglicum*, preface, p. xvii.

³ "This is the ordinance which the bishops and reeves belonging to London have ordained, and with 'weds' confirmed, among our 'frith-gegeldas,' as well 'eorlish' as 'coerlish,' in addition to the dooms which were fixed at 'Grataulia' and at Exeter and at 'Thunresfeld.'"—Thorpe, *Ancient Laws and Institutes of England*, "Laws of King Æthelstan" (vi., 1), vol. i., p. 229.

⁴ *Ibid.*, p. 229.

⁵ *Ibid.*, p. 231.

has given his 'wed' in our gild-ships . . . should die, . . . each gild-brother shall give a 'gesufel' loaf for his soul, and sing a fifty or get it sung within xxx days''¹; that whosoever might should avenge the injuries of all, that they "should be all in one friendship as in one foeship," and "that he who should kill a thief before other men, . . . be xii pence the better for the deed, and for the enterprise, from our common money . . ."² If gilds be defined somewhat broadly as associations "whose significant feature was a fraternal feeling of mutual interdependence and close affection,"³ "voluntary associations for mutual support,"⁴ or associations "for mutual help, made by the people themselves when and as they found the need for it,"⁵ then the London Frith-gild may be said to have been the first of English gilds, even though it is not plain that it was fully voluntary and the dooms of London ordained for its government were hardly "made by the people themselves." It is difficult to discover any essential difference between the organization of the London Frith-gild and the prevailing organization of the population in townships and hundreds. The convivial nature of the monthly meeting, of which "bytt-fything" was a feature, is of no significance; the meeting was, after all, of " 'hyndrum' and those who direct the tithings"—of officers of the regular subdivisions of the state, not of officers of a closer body within the

¹ Thorpe's *Ancient Laws and Institutes of England*, p. 237.

² *Ibid.*, p. 235. The dooms seem to end abruptly with the ninth head; the tenth, eleventh and twelfth heads are of a general nature, and refer to dooms fixed elsewhere by the King,—as if the dooms of London had been submitted to the King and sanctioned by him with amendments.—*Ibid.*, pp. 239–243.

³ E. R. A. Seligman, *Two Chapters on the Mediæval Guilds of England*.

⁴ Charles Gross, *The Gild Merchant*, Appendix B ("Anglo-Saxon Gilds"), p. 175.

⁵ Toulmin Smith, *English Gilds*, Introduction by Lucy Toulmin Smith, p. xxvi.

body of the state. The most important fact is that the dooms of London were expressly ordained for the people of London, that the body of population subject to them was treated as an exception in the general body of English people,—the first step towards corporate autonomy and independence.

2. Of the social-religious gilds there is some definite information concerning the gild at Exeter, D'Orcy's gild at Abbotsbury, the Thanes' gild at Cambridge and the Cnichten-gild of London, as well as some fragmentary references to others.

"This assembly was collected in Exeter, for the love of God, and for our souls' need, both in regard to our health of life here, and to the after days, which we desire for ourselves by God's doom." Meetings were held three times a year on feast days of the Church; each member made a contribution for the common expenses, and a priest at each meeting sang two masses, one for the living and one for the dead members; each brother was also to sing two psalms, one for the living and one for the dead. On the death of a brother, each other brother was to provide six masses or six psalms, and to contribute five pence. If a brother's house should be burned, each other brother should contribute a penny for his assistance. Fines were imposed for failure to perform fraternal obligations; "misgreeting" a brother was punished by a fine of thirty pence.¹

In D'Orcy's gild at Abbotsbury, contributions of money or wax were made by gild-brothers on the occasions of religious services; at the same time each contributed a loaf of bread for common alms. A fine was imposed for misgreeting another in the gild, in hostile temper. "Let him that introduceth more guests than he ought, without leave of the steward and the caterers, forfeit his entrance." In sickness, fraternal aid was

¹ John Mitchell Kemble, *Saxons in England*, vol. i., Appendix D.

rendered; in death, burial was provided and the attendance of all the brethren was required.¹

In the Thanes' gild at Cambridge, "each gave oath upon the relics to the rest, that he would hold true brotherhood to support him that hath the best right." Burial of a dead brother was conducted by his brethren and failure to attend was punished by fine. "Let the gildship inherit of the dead half a farm, and each gild-brother contribute two pence to the alms, and out of this sum let what is fitting to be taken to St. Æthelthryth." Brethren were aided in need and against the depredations of thieves.²

"If any gild-brother slay a man, and if he be a compelled avenger and compensate for his insult, . . . let each gild-brother assist . . . but if the gild-brother with folly and deceit slay a man, let him bear his own deed; and if a comrade slay another comrade through his own folly, let him bear his breach as regards the relations of the slain."

Misgreeting was punished by fine. In sickness or death, a brother should be removed whither he had willed.³

The "Anglica Cnichteen-gild of London" is said to have been originally composed of thirteen men who received a grant of land in eastern London from Cnut in recognition by him of powers displayed by them in personal combats. The right to hold land was accompanied by the right to associate and to bear the name "Cnichten-gild." They were recognized in a charter of Edward the Confessor as having a "gild," rights in land, and a body of special customs. In 1125, fifteen men, the successors of the original thirteen, gave to the church and canons

¹ John Mitchell Kemble, *Saxons in England*, vol. i., Appendix D.

² This is controverted by Gross, who believes the Anglo-Saxon text refers to murderers and not to thieves. See *Gild Merchant*, Appendix B ("Anglo-Saxon Gilds"), vol. i., p. 182.

³ Kemble, *Saxons in England*, vol. i., Appendix D.

of Holy Trinity near Aldgate the land and soke called "Anglissah Cnichte-gilde" in return for their admission to the monastery. They surrendered their charters to Holy Trinity, King Henry confirmed their gift and their history as an association ended. There were Cnichten-gilds in Winchester and Canterbury also.¹ To what class of society the cnichten belonged is uncertain, but it is plain from the evidence of the conveyance of land by the Cnichten-gild of Canterbury to Christ Church that its membership was partly or wholly composed of merchants.² If the word "Cnicht" be equivalent to "Thane," then it may be inferred that the Thanes' gild of Cambridge was also composed, to some extent, of the same class, especially as it is known that thanehood could be acquired by making three successful voyages to foreign lands. The Cnichten-gilds were at least probably restricted to the more prominent and influential classes in the towns.

3. There were also gilds organized under the auspices of the Church and composed wholly or partly of the clergy. One of the laws of King Edgar seems to indicate that such associations existed in his reign. "We enjoin, that no priest deprive another of any of those things which appertain to him; neither in his minster, nor in his shrift-district, nor in his gild-ship, nor in any of the things appertaining to him."³ There were gilds of the Kalenders (the most noted one being in Bristol) composed at first of clergy alone, who met on the first day of each month, but afterwards admitting lay-members, sometimes limited in number, and both men and women. William of Worcester is authority for the statement that

¹ Gross, *The Gild Merchant*, vol. i., pp. 186, 187.

² "Cnichitan on Cantuareberig of cepmanne-gild" (Cnichts of Canterbury of the Chapmen's-Gild).—*Ibidem*, vol. ii., p. 37, citing Somner, *Canterbury*, vol. i., p. 179.

³ Thorpe, *Ancient Laws and Institutes of England*, Canons enacted under King Edgar (9), vol. ii., p. 247.

the Gild of the Kalenders in Bristol "was founded in honor of the feast of Corpus Christi, long before the Norman Conquest, about the year 700," but the statement is discredited. Annexed to its normal activity as a gild, it had as one of its functions the custody of the archives of the town, the keeping of a monthly record of all public acts and the registration of deeds and rolls, and the maintenance of a school for Jews and other strangers for the purpose of bringing them up in Christianity.¹ In the fourteenth century, clergy were sometimes admitted to membership in secular Social-Religious gilds, but were not allowed to hold offices in them or participate in their deliberations.²

Bishop Osbern and the canons of St. Peter's monastery at Exeter were members of the gild at Woodbury, gathered "in the name of Christ and St. Peter the apostle"; at Easter, one penny for every hearth was to be paid to the canons; for every departed gild-brother one penny for every hearth was to be contributed as "soul-shot, be it a man be it a woman who belongs to the gildship"; "and the canons are to have 'the soul-shot,' and perform such service for them as they ought to perform."³ In Bishop Wolfstan's gild, the bishop was associated with the abbots of Evesham, Chertsey, Bath, Pershore, Winchcombe and Gloucester, and the dean of Worcester. They were to

¹ Toulmin Smith, *English Gilds*, p. 288.

² The following was one of the ordinances of the Gild of the Holy Trinity, at Cambridge, in 1389: "If any ecclesiastic, especially one in holy orders, comes into the gild, he shall not be put into any office of the gild; nor shall any of its goods be put under his charge; nor shall he be let meddle in any way with such things; but lay brothers of the gild shall undertake them who are best able to deal with such things, and to bear the burthen of such offices. For it is neither becoming nor lawful that a parson should in any way mix himself up with secular business; nor does it befit the good name or come within the calling of such men that they take on themselves offices and things of this sort."—*Ibid.*, pp. 264, 265.

³ Thorpe, *Diplomatarium Anglicum*, pp. 608, 609.

"be faithful to our temporal lord King William and to Matilda the lady," to be obedient to God and St. Mary and St. Benedict and to be "quasi cor unum et anima una." Every week there were to be two masses in each monastery. "It is the agreement of the abbots that they will be obedient to God and to their bishop, for their common need." "Each shall perform and, for his own account, buy a hundred masses, and bathe a hundred needy men, and feed them, and shoe them. And each [shall] sing himself seven masses and for thirty days set his meat before him, and a penny upon the meat."¹

After the Norman Conquest, the Frith-gilds appear to have lost their identity as social units. Their social functions came to be performed by other kinds of associations, by the towns, Trade gilds, and Social-Religious gilds. Moreover, the growth of a national government and of the feudal system provided new centres around which the old mutual responsibility might revolve. The Ecclesiastical gilds, also, seem to have been crowded out by the development of a more completely organized church.² Yet there is reason to believe, notwithstanding serious breaks in the historical evidence, that the Social-Religious gilds contrived to be prominent and influential factors in English town-life until the middle of the sixteenth century. But they had scarcely any new features. All their essential elements as gilds were already present at the time of the Conquest, the restricted membership, the periodical meetings on feast-days of the Church, the

¹ Thorpe, *Diplomatarium Anglicum*, pp. 615, 616.

² The Gild of Corpus Christi, of York, founded in 1408, had an elaborate procession each year. Six priests were annually chosen masters, and were to offer prayers for the dead and living members of the fraternity every day and accept new members. Lay members had to make offerings, but took no part in the councils or government of the gild. At the end of each year the six outgoing masters made a report to their six successors. The constitution and ordinances were much modified later, however, and the craft-gilds participated in the pageants and processions.—Toulmin Smith, *Ordinances of English Gilds*, pp. 141-143.

contributions to a common fund for purposes of religious worship and of fraternal and general charity, the feasts, and fraternal aid in sickness, distress and death.

In the second Parliament of 1388, held by Richard II. at Cambridge, writs were ordered to be sent to all sheriffs directing them to call upon the "Masters and Wardens of all gilds and brotherhoods" for returns

"as to the manner and form and authority of the foundation and beginning and continuance and governance of the gilds and brotherhoods aforesaid: as to the manner and form of the oaths, gatherings, feasts, and general meetings of the brethren and sisters; and of all other such things touching these gilds and brotherhoods: also as to their liberties, privileges, statutes, ordinances, usages, and customs and moreover as to all [their] lands, tenements, rents and possessions, whether held in mortmain or not, and as to [their] goods and chattels, . . . and as to the true value of said lands, tenements, rents, and possessions, and the true worth of said goods and chattels: also as to the whole manner and form of all and every the premises, and of all other matters and things in any way concerning or touching the said gilds and brotherhoods"; "And that the said masters and wardens shall bring and lay before us and our said council . . . the charters and letters patent, if they have any, granted by us or any of our forefathers, in any way touching or concerning the aforesaid gilds or brotherhoods, upon pain of the revocation and perpetual annulling of the charters and letters aforesaid, and of all the liberties, immunities, privileges, and grants contained in [them]"

to await such further orders as should be given by the council and Parliament.¹ In compliance with the terms of the writs, many reports² were made in behalf of the

¹ The writ issued to the sheriffs of London is printed in Toulmin Smith's *Ordinances of English Gilds*, p. 127. This order did not extend to merchant or Craft gilds; see pages 146, 148, *infra*.

² Including those of Craft gilds, more than five hundred reports or "returns" were made. Fully two thirds must have been those of strictly Social-Religious gilds.

gilds, from which their character at that time may be quite fully learned. A brief consideration of them will substantiate the statement that they differed little from those of the eleventh century.

The gild, founded and organized by the town or by a group of people within it, was almost universally dedicated to some saint or religious symbol,¹ and was usually known by that name except when it happened to be the only or most prominent gild in a town, and then it was often known by the name of its location. Among the purposes of the gild were the "amendment of the lives and souls" of the brethren and sisters and the "nourishment of love" between them, prayer for all manner of men at every meeting, the maintenance of a saint's image in a church; the "maintenance of the play of the Lords' Prayer in York, for the benefit of both hearers and upholders," and "to hold certain [religious] services and the better to secure the liberties of the town." The head officers were from one to four wardens (usually with a small body of assistants called stewards),—an alderman, steward and two assistants,—or an alderman, chamberlain and eight assistants. Other officers were deans, clerks, bellmen and beadles. In some gilds small salaries were paid to some of the officers. The officers were elected annually by the whole fraternity, annual reports were required and refusal to accept office was punishable by fine. Ordinances were enacted by the consent of all at annual or quarterly meetings, but they were not to be against the common law or the "King's right." From one to four meetings were held each year. Both men and women (whether resident or not) were admitted to membership on vote of the fraternity or by leave of the

¹ "In the worship of God almightie oure creator, and hys moder seinte marie, and al halwes, and seint James apostle, a fraternite is bygonne of good men, in the chirche of seint James atte Garlikhitle in London," is a fair example of the introductory part of the reports of the gilds.

warden and twelve members.¹ An entrance oath to keep the ordinances of the gild was usually imposed, and sometimes a "kiss of love" had to be given to the new-comer by all present. The ordinances of the gild were read to new members (and sometimes to all members) so that they might not plead ignorance of them. Entrance fees and annual and quarterly dues were levied and voluntary contributions recommended.² Property in the form of lands and tenements, grain, cattle (leased by the year) and articles used in religious ceremonies was owned by the gild.³ Many members (and even non-members) donated or willed property to the gild for general or special purposes.

The regular and special meetings were usually held after more or less elaborate devotional services in the church of the patron saint of the gild or elsewhere, the expenses of which it had partly or wholly defrayed. Some of the gilds maintained chaplains, chapels or chantries; others provided that a chaplain should be maintained if the gild could afford it, the poor of the gild having the first claim on its resources. All meetings were characterized by the usual feasting and drinking, for

¹ Parsons, bakers and the wives of non-members were ineligible to membership in the Gild of the Annunciation in Cambridge. Class distinctions were closely drawn in some gilds. "Whereas this gild [Gild of St. Michael's on the Hill, of Lincoln] was founded by folks of common and middling rank, it is ordained that no one of the rank of mayor or bailiff shall become a brother of the gild, unless he is found to be of humble, good and honest conversation, and is admitted by the choice and common assent of the brethren and sisters of the gild. And none such shall meddle in any matter, unless especially summoned; nor . . . take on himself any office in the gild. . . . And no one shall have any claim to office in this gild on account of the honor and dignity of his personal rank."—Smith, *Ordinances of English Gilds*, p. 179.

² Sometimes sureties were presented for the payment of dues. The entrance fee for a married couple was the same as for a single person; no additional fee was required for the admission of a second wife.

³ Almost the only property of the Gild of the Lord's Prayer, of York, was its play-properties and a chest to keep them in.

the provision and regulation of which the ordinances contained many rules, as that no brother should enter the "ale chamber" without permission of the warden, that the officers should have certain allowances, that "no brother nor sister [should] be so hardy, [as] to sleep, nor let the cup stand by him," and that no brother should sit at the feast longer than the aldermen; many of the gilds had processions and games and a few produced spectacles on the occasions of their meetings.¹ Absence from the meetings (especially on the part of members in town when they were held) was punished by fine. Members were not to attend meetings in a tabard or cloak or in bare legs or barefooted. Some gilds had a livery worn at all meetings and at the burial of brethren and all public courts in which the gild participated; if a brother could not afford a full suit of livery, he was provided with at least a hood at the expense of the fraternity.

All brethren were to be good men or men of good repute; no others were admitted; if members committed crimes, violated the canon law or were otherwise seriously remiss, they were subject to expulsion, until, at least, their conduct should be amended. Brethren unruly, boisterous, heedless of the ordinances or rebellious of tongue toward the aldermen were subject to punishment by fine. Penalties for wronging one another or disclosing to outsiders the affairs of the gild were provided. No

¹ One feature of the annual meeting of the Gild of St. Martin at Stamford was a bull-hunt with dogs. The finding of the holy cross was often represented in street processions. In that of the Gild of St. Elene, of Beverly, founded in 1378, "a fair youth, the fairest they can find," was clad as a queen, and was followed by two old men, one with a cross and the other with a shovel; then came the sisters two by two and the brothers likewise. When the procession reached the Church of the Friars Minors of Beverly, mass was celebrated and offerings made. A meeting of the brethren followed next, at which "they eat bread and cheese and drink as much ale as is good for them," and elected their officers for the ensuing year.—Toulmin Smith, *Ordinances of English Gilds*, pp. 148, 149.

gild-brother might become surety for another for debt or trespass or other obligation without the consent of the aldermen and chief brethren. In case members should quarrel or disagree, their matters of difference should be submitted to the aldermen alone or with a part or all the brethren; if they should disregard the decision reached or should again quarrel, they should be subject to expulsion; suits at law should be resorted to only on consent of the gild after its efforts to reach a settlement had proved unavailing. Fraternal aid was extended in old age, sickness, loss by robbery and damage by fire or the sea. Money was loaned from the common-box in times of need, security for its repayment being sometimes required. Young brethren were helped to find work. Young unmarried women of the gild were also materially assisted:

“If any good girl of the gild, of marriageable age, cannot have the means found by her father, either to go into a religious house or to marry, whichever she wishes to do; friendly and right help shall be given her, out of our means and our common-chest, towards enabling her to do whichever of the two she wishes.”¹

Brethren distressed in their business were assisted, unless their straits should be due to their own folly, riotous living, rising too late in the morning or sloth and indolence. Members unjustly imprisoned were visited and comforted. Members on pilgrimages to the Holy Land or elsewhere were exempt from the payment of fees, or positively assisted, accompanied outside the walls of the city on setting out and met on returning. When a brother died, all (on penalty of being fined) attended the services at his burial, defrayed the expenses of it, and made offerings not only for the masses for his soul's wel-

¹Gild of the Palmers, at Ludlow; see Smith's *Ordinances of English Gilds*, p. 194.

fare but for general alms¹; if he died out of town, his corpse was brought back at the expense of the gild, or services were held even in its absence; if he were drowned it was the duty of his gild-brothers to search the sea for his body (to a distance of six miles). In some towns the gild had peals rung in honor of dead brethren. One of the ordinances of the Gild of Palmers, at Ludlow, provided that a brother might keep night-watches with the dead on condition that he "neither call up ghosts, nor make any mockeries of the body or its good name nor do any other scandals of the kind."

In addition to purely social-religious functions, many gilds assumed a variety of public functions, as the maintenance of schools and hospitals, care of bridges and highways and the repair of town-walls. The Gild of Ringers, which flourished at Bristol in the fourteenth and fifteenth centuries, and the Gild of Minstrels and Plays, found in Lincoln at the end of the fourteenth century, aimed to promote the cultivation of music.²

With few exceptions the gilds that made returns in 1389 had been formed in the fourteenth century. The returns are not proof of an historical continuity of Social-Religious gilds from the eleventh to the fourteenth century, and there is little supplementary evidence. But, on the other hand, there is nothing to account for an exceptional outburst of such organizations in the fourteenth century. The close similarity of the gilds then existing to those of the eleventh century is in itself an argument for the continuation of such a social structure during the intervening two centuries—an argument strengthened by

¹ At Stratford-on-Avon, any poor person (whether townsman or stranger) dying in the town was buried by the Gild of the Holy Cross at its own expense.

² To avoid too numerous references, authorities have not been given for each detailed feature of gild-life. With few exceptions they have been taken from the documents published in Toulmin Smith's *Ordinances of English Gilds*.

VOL. I.—10.

the fact that Merchant gilds, with all the dominant characteristics of the purely Social-Religious gilds, were most prevalent in the twelfth and thirteenth centuries. If there is some uncertainty of their activity during some centuries, the middle of the sixteenth century is very definitely the time when their activity ceased. In the act of 1545 for the dissolution of colleges in the reign of Henry VIII.,¹ "fraternities, brotherhoods and guylds" were included with "colleges, free chapelles, chantries and hospitalles"; many were expressly named for dissolution, and commissioners were to investigate many others; but by the more general provisions of the act of Edward VI. of 1547 for the same purpose, all fraternities, brotherhoods and gilds in England and Wales and the King's other dominions, except those of "Mysteries or Crafts," and all their property should be in the possession of the King "without office or inquisition."

The derivation of gilds is as doubtful as most questions relating to them. The class of writers that are inclined to find an origin in Roman institutions for many other features of the structure of Anglo-Saxon and English society, look to the Roman "collegia" and "sodalitates" for the source of English gilds; but it certainly is impossible to prove a continuity of organization from the Roman to the Anglo-Saxon period; the only argument seems to be based on the mere similarity of the institutions, and that, of course, is hardly sufficient. Other writers have sought to trace gilds to the old heathen sacrificial feasts of the Teutons, at which either kinsmen or larger groups of tribesmen gathered; but there was no stable organization or fixed body of relations among the people that attended them; the only common feature was the periodical meeting for religious worship with its accompanying feasting and drinking. Gilds have also been called "artificial families," with the clear intimation

¹ 37 Henry VIII., c. 4.

that they have their source in the family—a suggestion that can be based on hardly more than fancy. Perhaps they may be most easily explained (or their explanation avoided) by deciding that they were merely “natural” or “spontaneous” organizations, having their origin in the spirit of the time or in current conditions.

The status of a corporation was hardly attained by any of the three classes of gilds described. The attitude of the state toward associations of its subjects may be of four kinds; it may (*a*) oppose, (*b*) permit, (*c*) encourage or (*d*) demand them. (*a*) If the state is opposed to them and they exist in spite of its efforts to suppress them, they are assuredly not corporations. (*b*) If the state is indifferent and merely permits them to exist, they are likewise not corporations, wanting as they are in the power to enlist the coercive power of the state in the maintenance of a body of rights and powers. (*c*) The ideal attitude of the state towards corporations is one not of passive indifference but of active encouragement; the state recognizes the public importance of their functions and secures the performance of them through the bestowal of the necessary rights and powers and of the legal sanction to make them fully operative. (*d*) If the state compulsorily and arbitrarily divides its subjects into groups for governmental purposes, they are not corporations, even if they have in their own control the administration of the affairs of particular importance to them. Thus the Frith-gilds, though they appeared to be executing “agreements,” were virtually compulsory organizations of local populations; the attitude of the state towards them was one of more than mere encouragement. On the other hand the Social-Religious and Ecclesiastical gilds exercised functions not recognized as essential to public welfare; the attitude of the state was correspondingly passive. Yet whether purely voluntary or compulsory, the associations had the internal

organization that would be serviceable for corporate activity; the use of such an organization would be calculated to train the people in preparation for more independent self-control.

III.—Merchant Gilds

The Merchant gild (or gild merchant, as it was usually called) was merely a gild of merchants. A gild was an association of persons for the preservation of the peace, the promotion of social fellowship, the performance of religious worship or some other phase of social activity of common interest to its members; merchant gilds differed from other gilds in having for their purpose the protection and promotion of the economic interests of merchants. It would be hardly right to say that they were derived from other kinds of gilds. Mutual responsibility and mutual advantage organically rendered was a universal characteristic of local mediæval society; the social unit through which they had to be secured was necessarily a small unit. The particular kinds of gilds prominent in each successive period depended on the social needs of the time. The merchant gild did not make its appearance until after the Conquest because, doubtless, the economic development of England had not earlier attained a point at which there was a trading class to organize. Possibly the mutual interests of traders, unimportant as they must have been, had previously found protection under the guise of the Cnichten-gilds; the reference to one of the earliest merchant gilds, the so-called Chapmen's Gild at Canterbury in the archepiscopate of Anselm, seems to indicate such a connection.¹ Writers have often without warrant considered the Cnichten-gild of London a merchant gild. But mere speculation is idle; the first historical evidence of a gild that may certainly

¹ *Supra*, p. 137, note.

be called a merchant gild is in a document evidencing the conveyance by the Chapmen Gild of Canterbury of some houses to Christ Church between 1093 and 1109, and in a charter of Robert Fitz-Hamon to the burgesses of Bereford between 1087 and 1107.¹ As a matter of historical evidence, then, the merchant gild made its appearance in England at the end of the eleventh century. Closer relations with the Continent and the greater security of life and property afforded by the rigorous rule of the Conqueror gave an impetus to English commerce at home and abroad; moreover, a considerable body of traders followed William to England,—such at least is a fair inference from the frequency with which French surnames are found among the merchants of London and other important towns of the period. The merchant gild as an institution may have been imported by the foreigners into England, for it flourished on the Continent among peoples with whom the English were in close contact before it arose in England; but the weight of evidence is against such an origin; it was not found in London where the influence of the foreigners was greatest and it was found in many small and remote places² whose influence must have been slight; moreover, the governing class of the Normans do not appear to have favored its transplanting. It was essentially due to conditions new in England, but comparatively old on the Continent. The origin of the merchant gild in England must be ascribed to those conditions and to the character of the local social structure within which the new conditions

¹ Gross, *The Gild Merchant*, vol. i., p. 5.

² Gross gives a list of more than one hundred towns in England in which the merchant gild flourished.—*Ibidem*, pp. 9-16. He adds, with relation to the same matter. "It may safely be stated that at least one-third—and probably a much greater proportion—of the boroughs of England were endowed with this gild in the thirteenth century; that, in fact, it was not an adventitious institution, but one of the most prevalent and characteristic features of English municipalities."—*Ibidem*, p. 22.

would have to be correlated with existing social activity. Institutions are not easily transported. The rise of the new commercial life and the wide application of the principle of mutual responsibility and mutual advantage in local groups in state and church and secular society are quite sufficient to account for the rise of the merchant gild in England.

As an institution of local social organization, the merchant gild flourished in England during three hundred years, the twelfth, thirteenth and fourteenth centuries, the charters granting it being most numerous in the reigns of Henry I., Henry II., Richard I. and John. For the sake of convenience, its earliest features will first be considered, and then the respects in which it changed during the three centuries.

The power to organize and maintain a merchant gild was usually conceded to the people of a locality by the king, or by a secular or ecclesiastical lord (latterly with the consent of the king), in a charter along with other municipal franchises of the character already¹ described.² But the franchise differed from most of the other municipal franchises as involving the right to form an association for certain purposes.

"If we attempt to expand the brief phrase used in the charter we seem brought to some such result as the following: The king gives to the burgesses a right to form or retain an association for the purpose of employing to the best advantage those mercantile immunities which by other words of his charter he has conferred upon them. They are to be toll-free;

¹ *Supra*, p. 149.

² "Sciatis me concessisse hominibus de Andewra ut habeant gildam mercatorum in Andewra . . ."—Charter of Henry II. to Andover, quoted by Gross in *Gild Merchant*, vol. i., p. 9, note (1). "Concessimus [burgensibus nostris de Gippeswics] quod habeant gildam mercatoriam et hausam suam."—Charter of John to Ipswich in 1200, *ibidem*, vol. ii., p. 115.

they may organize themselves for the purpose of maintaining this freedom."¹

The work of organization was initiated, if the general rule may be inferred from the case of Ipswich in 1200, by the organized municipality. When the burgesses of Ipswich had received their charter from King John in 1200, they first organized their municipal government by the election of their bailiffs, coroners and other capital portmen. The latter then ordained that there should be elected by the council of the town one alderman of the merchant gild, with whom were to be associated four "approved and lawful men"; the five were then to make oath that they would "well and faithfully maintain the said gild and all things appertaining to it." The alderman and four assistants having been chosen in a popular town meeting and duly sworn, announced that all freemen of the town were to come before them on a future day to organize their gild and pay their house (or fees). Further the municipality,—the bailiffs, coroners and popular body, after discussing how the gild should be maintained, decided that the alderman and his successors in office should have the monopoly of "buying and selling certain kinds of stone and marble," with the duty of making an annual report to the bailiff and coroners of his profits therefrom.² Once organized, the gild elected its own officers, maintained its own treasury, held its own meetings and passed and kept in a separate roll its own ordinances.

Most frequently, as in Ipswich, the gild was presided over by an alderman, assisted by two or four associates called stewards or wardens, but in some towns his place

¹ Pollock and Maitland, *History of English Law*, vol. i., p. 648; see also pages 648–652 for a general consideration of the "Gild Merchant."

² Gross, *Gild Merchant*, vol. i., pp. 24–26. At King's Lynn, the skevins of the gild traded in mill-stones for the benefit of the community.—*Ibidem*, p. 79.

was occupied by one or two stewards, masters, wardens, or keepers. There were also usually several minor officers, such as door-keepers, treasurers, clerks and marshals. The officers were annually elected by the brethren of the gild. The duties of the alderman or other head officer were, in general, to preside over the deliberations of the gild, to enforce its ordinances, to care for its property, to collect its fines, entrance fees, assessments, tolls and profits from monopolies and other revenues, and to settle disputes between gildsmen.¹ The meetings of the gild, at which members were admitted, ordinances made and other gild business transacted, were annual, semi-annual or quarterly, and were called "morghespeches." Membership in the gild was obtained by election by the brethren and the payment of an entrance fee (usually lower in the case of relations of existing brethren). "The newly elected member was required to take an oath of fealty to the fraternity, swearing to observe its laws, to uphold its privileges, not to divulge its counsels, to obey its officers, and not to aid any non-gildsman under cover of the newly acquired 'freedom'"—a requirement sometimes prudently supplemented by the demand of sureties for fulfilling the new obligations.² Not only were there burgesses who were not brethren of the gild merchant, but there were gildsmen who were not burgesses, both among residents and non-residents of the town. Burgesses were eligible to membership but had to be formally admitted by the brotherhood. Sometimes villains, but usually only freemen, might become members. Non-residents of the town, as, *e. g.*, neighboring lords and ecclesiastics, were often admitted to the gild.³

¹ Gross, *Gild Merchant*, vol. i., pp. 26-29.

² *Ibidem*, p. 29.

³ The participation by non-residents in the life of the merchant gild was constitutionally recognized in the Charter of Henry II. to Lincoln: "Sciatis me concessisse civibus meis Lincolnie omnes libertates et consuetudines

Monks¹ and women, who could not be burgesses, were admitted to the fraternity. It is possible that in some towns villains might be burgesses but not gildsmen, or *vice versa*. In many towns the tenants of privileged sokes of bishops, abbots, barons or constables of castles were not burgesses but might be and often were gildsmen. In some towns, as in Andover, gildsmen were of two classes, those of the "free gild" and of the "villein gild"; likewise there were grades of membership, as untransferable (except to near kinsmen) or limited to the life of the holder. Membership in the gild, however, entailed the burden of being "at scot and lot" with the burgesses—of sharing with them the financial burdens of the municipality,² while simple burgess-ship depended normally on the holding of a burgage in the town.

A gild court was evolved from the activity of the gild, having jurisdiction not only over its members, but in some cases even over non-members. Infractions of ordinances were punished by fines, expulsion and forfeitures of goods. At first the judicial function appears to have been exercised almost entirely in the "morghe-speche" or periodical meeting; later, ordinances were summarily enforced, to a large extent, by the head officer. The tendency of independent associations to attract

et leges suas quas habuerunt tempore Edwardi et Willelmi et Henrici regum Anglie, et gildam suam mercatorium de hominibus civitatis et de aliis mercatoribus comitatus sicut illam habuerunt tempore predictorum antecessorum nostrum regum Anglie melius et liberius."—Stubbs, *Select Charters*, p. 158.

¹ "In 1236 the abbot and monks of Buckfastleigh were admitted into the Gild of Totnes, so that they might make their purchases freely, paying yearly to the fraternity twenty-two pence for all tollages."—Gross, *Gild Merchant*, vol. i., p. 68.

² *Ibidem*, p. 31.

³ Sometimes the entrance-oath contemplated the assumption of such a relation to the town, as in Pevensey: "I will lot and scot with my goods and chattels to the community, in the quantity that I shall be assessed, according to my power."—*Ibidem*, p. 56.

judicial powers has already been noted in the rise of the municipalities¹; it will be observed quite as prominent in other forms of association as in municipalities and gilds.

The merchant gilds also preserved many of the usages of the social-religious gilds. The *morghespeches* and other general and special meetings were characterized by much feasting and drinking. "To drink the gild merchant" was significantly a usual expression for holding a gild meeting. The gild fraternity usually adopted the name of a saint or religious symbol, maintained priests, chapels and chantries and attended devotional services on feast days in a body. All gildsmen were required to attend the burial of a brother and contribute to its expense, if necessary, and to provide prayers for the welfare of his soul. Brethren in sickness, distress and poverty were aided, from a common-chest, and alms were distributed in general charity.² Disputes between brethren were settled by fraternal mediation. Slander and misgreeting were discouraged by adverse ordinances and penalties.

The general purpose of the gild merchant was to regulate trade³ in so far as it affected the community in which the gild flourished. The adoption of such ordinances as should reasonably subserve that purpose seemed to be implied in the grant to maintain an organization. Almost the only right specifically mentioned in the charters in addition to the general right to have the gild was "that no one who is not of the gild may trade in the said town, except with the consent of the burgesses,"—and that

¹ *Supra*, p. 151.

² The gild merchant of Coventry in the fourteenth century maintained a lodging-house with thirteen beds to lodge poor people travelling through the land "on pilgrimages or other works of charity," with a governor, and a woman to wash the pilgrims' feet.—Toulmin Smith, *Ordinances of English Gilds*, p. 231.

³ Cunningham, *Growth of English Industry and Commerce*, vol. i., p. 206.

was not a universal provision ; it was hardly necessary to its exercise that the power be specifically granted. By their ordinances tolls were levied on non-gildsmen from which gildsmen were exempt either wholly or in part : nor might they keep shops or sell specified articles at retail or in quantities less than specified, though most kinds of victuals in common use were excepted from the rule, and its operation was generally suspended during fairs (and sometimes on market days). No regrater (or engrosser), one who bought for the purpose of reselling,—except a gildsman might sell many articles at retail, nor might others buy of him, except gildsmen or townsmen. Frequently non-gildsmen might not trade with each other. Goods to be sold had to be exposed at the common hall or in the market-place, and sales had to be made within specified hours. Many articles might not be sold to foreigners (non-townsmen) at all. Stranger merchants might remain in town no longer than forty days and during their stay had to conduct their transactions in the presence of gildsmen. The foreigner might not disguise the sale of his goods under the name of a gildsman, nor might he enter into partnership with him. Gildsmen possessed the right of pre-emption of goods exposed for sale against a foreigner, and even against a townsman not of the gild ; they had likewise the right to make a first offer for cargoes brought to some ports. But a gildsman exercising the right of pre-emption had to divide his purchase with fellow gildsmen, if they should demand a division. Concerning some commodities there were special regulations in some towns, as that no fishdealer might cut his fish for sale without the license of the gild, and might not have a license as long as a townsman had fish to sell ; that a dealer in herrings might spend only one market-day in a town ; that (at Reading) a foreigner should forfeit his corn if he brought it before three o'clock on the market-day ; and that no foreigner should

bring tanned leather to Reading except at times of fairs. From all such ordinances, however, the non-gildsman, whether resident or foreigner, might purchase immunity. Such was the merchant gild as it appeared in its stage of greatest efficiency. An effort has been made to present an image of the ideal to which it approximated in its normal activity. It must be borne in mind that it was always modified by its environment and that in common with other social institutions it was in process of change during the entire three centuries of its existence, whether the change was due to its own activity or to that of other institutions with which it necessarily came in contact. There remain for consideration, then, the historical changes through which it passed in (*a*) its internal relations, (*b*) its relations to the town and (*c*) its relations to industry and commerce and their other organizations.

(*a*) It is assumed that in its earliest stages, before it became recognized as a definite part of the social machinery of town-life, the merchant gild was a simple association of merchants for their common good like the social-religious gilds. If so, there must have been a substantial equality of membership. Before the rise of the towns as possessors of a body of franchises, liberties and immunities, not only within their own limits, but beyond them in every part of England, the merchant gild must have had only a small body of powers and those necessarily restricted to the interrelations of their members. The membership of the gild must have consisted almost wholly of residents of the town in which it flourished; and the townsmen were on nearly the same social plane.

↓ There are many reasons to believe, in the dearth of historical information, that the early merchant gild was very democratic. During the twelfth and thirteenth centuries, however, the town population was being differentiated into well-defined classes. A landless class in the towns

increased in number and a class of merchants arose—a class of townsmen who produced not entirely for consumption but partly to get a surplus for exchange. A class of non-residents with a surplus to exchange desired to enjoy the mercantile privileges of the towns, which they could do only under the regulations of the gild. Even a class of artisans, humble as they must have been, must have needed the privileges of the merchant gild as well as the noble baron or abbot with his quantity of agricultural goods to exchange. In the presence of such changes in the society and social life affected by the activity of the gild, it is not difficult to understand how, from being democratic in the beginning of the twelfth century, it came to be a closer and more aristocratic body at the end of the thirteenth century. The changes that characterized the towns themselves¹ were closely paralleled in the merchant gilds. In one gild the differentiation in gild membership was constitutionally recognized by the distinction of “free gild” from “villain” or “hause gild.” Within the gild a small body of assistants necessary to the alderman in the administration of his office hardened into a prominent part of the gild machinery, while the non-official body of merchants originally a part of the self-governing fraternity came to participate less fully in its direction. Mere exemption from the restrictions of the gild without membership in it became as suitable to the needs of the merchant as full membership in it; so it must have appeared to the non-townsmen and lower classes of townsmen, who could view the gild only as a restrictive organization; only substantial townsmen, persons vitally interested in the promotion of the town, could heartily endorse the measures of the gild. Freedom of the gild, like freedom of the town, became a term of passive, not active import,—the right not to be interfered with by an organized body, not the right to

¹ See page 153, *supra*.

participate in it. The merchant gild, from being a democratic self-governing organization, became an oligarchical corporation to which the state had virtually delegated the power of controlling the economic activity of a local body of subjects.

(b) The relations of the merchant gild to the state were maintained through the municipality; even where there was no "free borough" and yet a gild merchant, the community of inhabitants was recognized as a basis for the formation and maintenance of the gild. The men of a town might organize a merchant gild, whether or not they had such a municipal organization and such a body of rights as would make them a "free borough." The organization with which it came in contact or which it supplemented was the town. The merchant gild seems seldom or never to have been directly dealt with by the Crown. When a charter of liberties or franchises was granted to a town, its people were in possession of a body of powers whose exercise would result in undoubted benefit to them. The most substantial of the granted powers and almost the only ones through which they would come in contact with the people of other towns had to do with trade and commerce. Without putting too much stress on the mediæval tendency to apply the principle of mutual responsibility and mutual advantage to all groups of persons engaged in the same occupation, living in the same restricted locality or otherwise dominated by a common interest, the control of buying and selling might have been expected to be reposed in the buying and selling class, the merchants. The use of the powers granted by charter was recognized to be of importance to the town; the powers could be used by the mercantile class; the powers were simply resigned to them for their exercise and they were permitted to form an independent organization for the more efficient exercise of them. The conditions were those that are always present

in the growth of corporations,—the recognition of the public importance of the activity of certain classes acting in response to the demands of their own interest, and the consequent bestowal upon them of an organization through which, by pursuing their own interests, they may promote the public welfare. The merchant gild was, then, a corporation whose organization was initiated by the municipality or community in which it flourished.

The relations of the gild merchant to the towns have been the source of much controversy. Some writers have described the gild merchant as merely a voluntary association of merchants acting in matters of common interest for their mutual advantage, and sustaining no organic relations to the town. Others have described it as “the department of town administration whose duty was to maintain and regulate the trade monopoly,”¹ “an official organ of the municipality”² “and an organized part of the town constitution,”³ though “at first merely a private society, unconnected with the town government, having for its object the protection of its members, the tradesmen of the borough, and the maintenance of the newly invigorated trade interests.”⁴ Still others have identified the merchant gild with the town itself,⁵ have supposed the town to be simply a development of the gild⁶

¹ Possibly the context ought to be quoted: “The words ‘so that no one who is not of the Gild may trade in the said town, except with the consent of the burgesses’ . . . express the essence of this institution. It was clearly a concession of the exclusive right of trading within the borough. The gild was the department of town administration whose duty was to maintain and regulate the trade monopoly. This was the *raison d'être* of the Gild Merchant of the twelfth and thirteenth centuries; but the privilege was often construed to imply broader functions—the general regulation of trade and industry.”—Gross, *The Gild Merchant*, vol. i., p. 43. For other expressions of the same view, see pages 63, 89 and 105.

² *Ibidem*, p. 75.

³ *Ibidem*, pp. 158, 159.

⁴ *Ibidem*, p. 158.

⁵ Brady, *Treatise of English Boroughs*, pp. 20, 21.

⁶ Brentano, Introduction to Toulmin Smith's *English Gilds*, pp. lxxvi., xcvi., xcix. and cv.

or have found in the grant of the power to have a merchant gild the supreme test of the municipal character of a community.¹

There is no evidence that at any time the merchant gild was merely an association of persons, like a social-religious gild, promoting the interests of its members. When it first appears, it is as the repository of exceptional mercantile powers that have been bestowed upon the town community, unless indeed the Cnichten-gilds and Chapmen's Gild of Canterbury be considered the direct predecessors of the later merchant gilds, and of them unfortunately, nothing definite may be said.

In the possession and exercise of the exceptional mercantile powers that had been granted to towns, the volume of social activity controlled by the gild was greater than that of the municipal organization itself, while it had less opposition to overcome. The area of the town activity was, for the most part, that formerly occupied by the king and baronage—political activity—and was of course strictly construed; the activity of the gild covered a developing field, that had previously had only a limited existence and to the extent that it was increasing had never been under the control of king or baronage; the town, consequently, had to encounter more opposition than the gild in the exercise of its powers. The court leet also often remained in the hands of the feudal lord, abbot or bishop, and the field of town government was narrowed accordingly; the later degeneration of the leet court in the fifteenth century and its displacement by the justice of the peace must have had the same effect. Again, the town was frequently in conflict with the tenants of privi-

¹ Coke's *Reports*, Part X., 30 a, Sutton's Hospital Case. "It was well observed that in old time the inhabitants or burgesses of a town or borough were incorporated when the King granted to them to have *gildam mercatorium*." The statement was made in support of the proposition that the word "'*incorporo*,' or any derivative thereof, is not in law requisite to create an incorporation."

leged soles and adjoining areas; the membership of the gild, however, tended to include them; their interests were opposed to those of the townsmen but likely to be in harmony with those of the gildsmen. The substantial class of townsmen were the merchants, and as such the gild was their organization, while they participated in town life and town government merely as townsmen; their interest in the gild was closer and more real to them than their interest in the town. The mere initiation of the gild organization by the town did not make it subordinate to it or a department of town administration. The merchant gild of Ipswich was not a department of the administration of the town of Ipswich. During the twelfth and thirteenth centuries a most noticeable feature of town life was the identity of town officers and gild officers, but such identity does not imply that there was an organic connection between the town and gild governments. During the century of the three Edwards, during which the merchant class became a ruling oligarchy in the towns, a townsman became mayor because he was a prominent merchant and consequently prominent in the merchant gild; he was not made alderman of the gild because he was prominent in the town government. The truth probably is that in the contact of the two organisms, the one of greater strength, the gild, was gradually absorbing the vitality of the weaker, the town, by controlling it through the identity of officials. In some towns the municipal government was actually supplanted by that of the merchant gild; in others the gild became the dominant force in the town government, but manifested itself through identity of officers or the less tangible identity of class interest.

The error in identifying the gild with the municipality is due to a failure to consider that the franchise to have a gild merchant was only one of the franchises usually granted to a mediæval town, though the gild merchant

(and the municipal power that it wielded) was usually the most important element of town life; besides, the earlier relations of the gild and town were unjustly assumed to have been the same as those found in some places in the fourteenth and fifteenth centuries. As a rough test of the municipal character of a community, the possession of the merchant gild was not always misleading, as that franchise was nearly always only one of several that together were sufficient to constitute a "free borough." It is hardly necessary to add, in the light of what has been said, that the town was not derived from the gild, though its development was greatly promoted by it.

(c) The class of artisans during the twelfth century was quite insignificant. Most of the goods sold in markets and fairs were the "extracted" products of the land and sea, agricultural products, fish and minerals and products for immediate consumption or luxuries requiring little of the labor of artisans. Nor was there a marked differentiation of merchants into classes. During the thirteenth and fourteenth centuries classes of artisans arose and to the class of general merchants were added classes dealing in particular lines of goods. What was the position of the earlier craftsmen (including both artisans and dealers in special goods) in the merchant gild, or whether they had any recognized status in it at all, is uncertain; at all events, during the thirteenth and fourteenth centuries they came to be organized in craft gilds. Suffice it to say at this point—the question will be considered later—that in some places the merchant gild became a composite body formed by the union of craft gilds, while in others they simply ceased to exist, except as purely social-religious bodies, leaving the field of economic regulation to the town corporation and the craft gilds. The fourteenth century was one of decay for the merchant gild as an independent institution. By the fifteenth century it had ceased to be a force in English municipal life,

though its name was perpetuated in some obsolete bodies.

IV—Craft Gilds

As the merchant gilds were organizations of the general mercantile bodies of English towns, so the craft gilds were organizations of the separate bodies of traders and artisans into which the wider bodies were differentiated in the course of the thirteenth and fourteenth centuries. In considering them the same plan may be used that was used in considering the earlier organizations. First, they may be described as they normally appeared; then the historical changes that they underwent may be detailed. Such a method of considering any social institution has its manifest advantages, for social structure is never permanent; as society is always in a condition of change, the forms or combinations of relations in which it is enclosed are always subject to modification, whether in the nature of growth or decay, and whether due to purely internal cause or to contact with their environment. There is in any given institution, however, what may fairly be called its normal condition, when its structure is clearly adapted to its functions and no part of it is plainly abortive or over-developed, even if there be no particular time at which all its parts are doing simply the work for which they are fitted and no more, and when their correlated activity is harmonious. The normal condition of an institution is not necessarily that in which it is accomplishing the most or greatest results; it not infrequently happens, especially in periods of rapid social change, that the condition of an institution becomes abnormal and by reason of the absence of appropriate means through which social activity may be exercised, it is called upon to do and does work for which it is not intended or adapted, but which is greater and more important to society than its own work normally performed. Nor is the existence

of an institution's normal condition coincidental with its possession of fixity or stability; peculiarly enough, the contrary is nearer the truth; rigidity is rather a mark of decadence than of vigor. When its condition is normal an institution is likely to be impressionable and readily adaptable to fluctuations in the conditions of the field of activity embraced by it; it owes its strength not to its rigidity but to its flexibility.

In general, the craft gilds had most of the religious and fraternal characteristics of the social-religious gilds and merchant gilds. Almost universally dedicated to some saint or religious symbol,¹ and known by its name or by the name of the trade or craft organized within them, they contributed to the maintenance of lights and torches at religious services, supported chapels, priests and chantries in cathedral, monastic or parish churches, attended masses and funeral services in a body, made offerings and presented street-spectacles on feast-days of the Church and aided in the maintenance and repair of church structures. Their periodical meetings for the election of officers, the enactment of ordinances and the punishment of members for infractions of them were characterized by the usual fraternal feasting and ale-drinking. They aided their members in sickness, helpless old age, poverty, commercial failure, loss by shipwreck and fire and other distress, and after their death defrayed, if necessary, the expense of their burial and of masses and prayers for the repose of their souls. They aimed, finally, to maintain a standard of morality and fraternal courtesy by a code of appropriate ordinances and the necessary penalties of fines and expulsion.²

¹ In writing of the gild of Smiths of Chesterfield, Toulmin Smith affirms: "Among the records of at least six hundred early English gilds [not all of them craft gilds] that have come under my careful review, I have very rarely found this absence [of a patron saint, as in the gild of Smiths] save in some of the Gilds Merchant."—*Ordinances of English Gilds*, p. 168, note.

² *Supra*, p. 154.

The system of government was also quite similar to that of other secular gilds. The head officer,—master, bailiff, warden, or overseer,—was elected annually by the whole fraternity. In the smaller gilds the head officer was usually the only officer, being informally assisted as occasion required by the advice of the more influential and “reputable” members of the fraternity. In the larger gilds the head officer was usually a master, assisted by regularly elected wardens, two to six (in one gild, fifteen) in number, the latter performing the actual work of government, and the former acting as presiding officer. The general meetings of the gilds were called hallmotes, as among the bakers, or loghallmotes (hallmotes for recapitulating laws)¹ as among the fishmongers,² and were held from once to four times each year. Failure to attend them was punishable by fine, as was also refusal to accept office.³ Officers usually served without compensation or with only such as was afforded by fees,⁴ but in

¹ “Whereas for some time the reputable men of the trade of fishmongers of London had a certain form, whereby they were bound to buy and sell their fish in certain places and within certain boundaries, according to certain points and certain articles, which are found in the remembrances of the City : the which points used to be read in the two Log halmotes which the reputable men held in the presence of the sheriffs each year. . . .” (Statutes of Fishmongers, *Liber Albus*, pp. 323-334). “The Bakers of London were required to have four hall-motes each year, thereat to receive the new sheriffs, remember the statutes pertaining to them, and receive the assize of bread.” (*Ibid.*) A few other gilds were in the habit of having read at their annual meetings their own statutes and those of the municipalities and King to which they had to conform. Compare the practice of monastic bodies, *supra*, p. 43, and of social-religious gilds (*supra*, pp. 142-145).

² *Liber Albus*, p. 327.

³ Ordinance of the Gild of Joiners and Carpenters of Worcester; Smith, *English Gilds*, pp. 208-210.

⁴ The overseers of the trade of Cutlers, “for their trouble and diligence in searching for and presenting defaults found in the same, shall have the third part of the fines levied for the defaults so by them presented.”—*Memorials of London*, p. 441.

some of the larger gilds they received small salaries¹; they were always required to take an oath before the mayor or other head officer of the town upon entering office,² and were punished for neglect of official duties.³

The membership of the fraternity consisted of the men of the trade or craft admitted to it by consent of the whole body or its officers, and no one might "use the craft" in the town without being a gildsman or at least paying tribute to the gild. In general, also, and acting subject to its regulations, craftsmen became qualified for membership only by being vouched for as competent and trustworthy by persons already members or by serving an apprenticeship.⁴ Teaching a trade or craft to a person

¹ The bailiff of the mistery of Fishmongers received two marks per annum.—*Liber Albus*, p. 323.

² The oath administered to the masters and wardens of the mysteries of London in the reign of Henry IV. was as follows: "You shall swear that well and truly you shall overlook the act or mystery of N., of which you are masters, or wardens, for the year elected. And the good rules and ordinances of the same mystery, approved here by the Court, you shall keep and shall cause to be kept. And all the defaults that you shall find therein, done contrary thereto, you shall present unto the Chamberlain of the City from time to time, sparing no one for favor, and aggrieving no one for hate. Extortion or wrong unto no one, by color of your office, you shall do; nor unto anything that shall be against the estate and peace of the King or of the City, you shall consent. But for the time that you shall be in office, in all things pertaining unto the said mistery, according to the good laws and franchises of the said city, well and lawfully you shall behave yourself. . . . So God you help, and the Saints."—*Liber Albus* p. 451.

³ By the ordinances of the Whit-tawyers, "if the overseers shall be found lax and negligent about their duty, or partial to any person, for gift or for friendship, maintaining him or voluntarily permitting him [to continue] in his default, and shall not present him to the Mayor and Aldermen, or if by their neglect the annual assembly of the craft should fail to be held they were punishable by fine."—*Memorials of London*, pp. 232-234.

⁴ The provision that the freedom might be "bought" is frequently found, though it can be hardly conceded that the acquisition of the freedom would be entirely regardless of the fitness of the applicant. "No strange man shall be admitted to work in the trade, if he will not be an apprentice in the trade, or buy his freedom."—Articles of the Girdlers (1344), *Memorials of London*, p. 217.

without making him an apprentice was forbidden. On admission to the gild, both strangers and apprentices had to take an oath to keep the ordinances of the gild, and had to pay an entrance fee, as well as to enter into frank-pledge.¹ The usual minimum term of apprenticeship was seven years. On the death of a member, his widow might carry on the business until she should marry again, when, unless she should marry a gildsman, she had to dispose of her stock or tools and leave the business. The employment of women, however, except one's wedded wife or daughter, was forbidden.² Masters were not to entice journeymen or apprentices from one another or to retain them after learning that they had "wrongly" left others or that "they had not parted in a friendly and reasonable manner"³; and receiving lads as apprentices for the purpose of selling them to other masters was also forbidden.⁴ Nor might masters receive apprentices unless able to sustain them until the fulfilment of their covenants. Apprentices had to be enrolled before the town or gild officers at the beginning of their apprenticeship and again presented at its completion.⁵

Like the merchant gilds and unlike the social-religious gilds, the craft gilds enacted and enforced ordinances (also called "points," statutes and articles) for the control and regulation of the economic activity of their members, the chief purpose being to secure honest dealing and work from the tradesmen and craftsmen,⁶ at a price fair to both

¹ Ordinances of the Lorimers, *Liber Custumarum*, pp. 78, 79.

² Articles of the Girdlers, *Memorials of London*, p. 217.

³ Toulmin Smith, *Ordinances of English Gilds*, pp. 182-184.

⁴ Ordinances of the Gild of Joiners and Carpenters of Worcester; Smith, *English Gilds*, pp. 308, 210.

⁵ Articles of Joiners and Saddlers, *Liber Custumarum*, p. 81.

⁶ The Gild of Fullers of Bristol, in their application to the authorities of the city for the enrolment of proposed "points," prayed: "Whereas the said craft has, of old time, had diverse ordinances enrolled before you of record in the Gihald of Bristol, in order to put out and do away with all kinds of bad work and deceits which divers people, not knowing the craft,

producer and consumer. The ordinances were made by the town on its own initiative, or made by the gild and approved by the town, or independently made by the gild. They were sometimes enforced by the town on information by gild officials, and sometimes independently by the gilds. They provided that deceit should not be practised in the making of goods, either by the use of defective material or by inferior workmanship.

"No one of the . . . trade [of Furbishers] shall make in his house, or allow to be made, pommels or hilts of swords, if they be not of good pattern and steel; and the scabbards must be made of good calf-leather; and if any one shall be found doing to the contrary thereof, let him lose such false work, and be punished at the discretion of the Mayor and Aldermen. . . . No one shall cause a sword that has been broken to be repaired or made up again, in conceit or subtlety, to the deceiving of the people. . . ." "No man shall make a girdle of any worse leather than ox leather."*

By the ordinances of the weavers it was provided that no cloth should be made of flocks or thrums or of English or Spanish yarn mixed, that Spanish wool only was to be dyed in "bleache," that cloth was to be of only a certain weight, and that woof-threads should not be used

from time to time do, . . . by which defects the town and craft are fallen in bad repute in many places where the said cloths are put to sale, to the great reproach and hindrance of the said craft . . . may it please you to grant to the said suppliants the new additions and points . . . to the profit and amendment of the said craft and to the honor of the said town."—Smith, *English Gilds*, pp. 283-286.

In the first year of Edward III. it was ordained "that all the mysteries of the city of London shall be lawfully regulated and governed, each according to its nature in due manner, that so no knavery, false workmanship, or deceit shall be found in any manner in the said mysteries; both for the honor of the good folks of the said mysteries, and for the common profit of the people."—*Liber Albus*, p. 424.

* *Memorials of London*, pp. 258, 259.

* Articles of the Girdlers (1344), *Memorials of London*, p. 217.

for warp; and the weight and width of cloth were carefully provided for.¹ Cappers were to make caps of wool, black, white, lana, grisa; old caps were not to be dyed black, because thus they could often be sold for new caps; new caps of white or grey wool were not to be dyed black, because the color would be taken out by rain²; later it was provided that caps should not be worked in chalk or coal; even later, since "false" caps made of flocks instead of wool were brought into the country from abroad, foreign merchants were required to swear (and give security) that they would remove such goods from the country and not bring them in again; while all such caps found in the country in future were to be burned and their makers to be amerced. Lorimers should use no cast-iron or other defective material in making bridles, and old bridles should not be furbished up for sale; no joiner should make saddle-bows except of specified wood and in a particular manner, and no painter was to paint saddle-bows, made outside of the City, until they had been examined by the inspectors of the lorimers and by them certified by mark to be of proper material.³ Inferior leather should not be substituted by cordwainers for other leather⁴; nor, more specifically, should they "sell to any person shoes of bazen as being cordewayne, or of calf-leather for ox-leather."⁵ Beef was not to be baked in pies and sold for venison, and rabbits were not to be baked in pies and so sold at all.⁶ "No girdler should cause any girdle of silk, of wool, of leather, or of linen thread, to be garnished with any inferior metal than with latten, copper, iron and steel [and not with] lead, pewter, and tin, and other false things."⁷ Working at night was

¹ *Liber Custumarum*, pp. 125, 126. Compare Ordinances of Tapicers, *Memorials of London*, pp. 178, 179.

² *Ibid.*

³ *Liber Custumarum*, p. 78.

⁴ *Ibid.*, p. 83.

⁵ Articles of the Cordwainers or Sawyers, *Memorials of London*, p. 391.

⁶ Ordinances of the Pastelers or Pie-bakers, *Memorials of London*, p. 438.

⁷ *Memorials of London*, p. 155.



almost universally prohibited, because work then done was not sure to be well done, and was not easily inspected, and tended to deprive some members of the craft of work.¹ Likewise work was usually prohibited on Saturday afternoons, on feast-days of the Church (and on the eve of double feasts) and particularly on that of the patron saint of the gild, and in Christmas week and Easter week.²

Buying and selling were closely regulated at every point. Forestalling was particularly prohibited and re-grating strictly limited.

"No one of the trade [of Pepperers of Soperlane] shall mix any manner of wares, that is to say, shall put old things with

¹ Articles of Cappers, of London. All the reasons for which working by night was prohibited appear in the following extracts from ordinances :

"Many pieces of work, touching the . . . trade, which have been made by night, have not been convenient or profitable to the common people, as they should be, seeing that they have not been assayed by the wardens of the . . . trade, as they ought to be."—Articles of the Cutlers, *Memorials of London*, pp. 217-219.

"No one . . . shall work [at night], by reason that no man can work so neatly by night as by day. And many persons of the . . . trade, who compass how to practise deception in their work, desire to work by night rather than by day: and then they introduce false iron, and iron that has been cracked, for tin, and also, they put gilt on false copper, and cracked. And further . . . many of the . . . trade are wandering about all day, without working at all at their trade; and then, when they have become drunk and frantic, they take to their work, to the annoyance of the sick and of all their neighborhood, as well as by reason of the broils that arise between them and strange folks who are dwelling among them. And then they blow up their fires so vigorously, that their forges begin all at once to blaze; to the great peril of themselves and of all the neighborhood around. And then, too, all the neighbors are much in dread of the sparks, which so vigorously issue forth in all directions from the mouths of the chimneys in their forges. By reason whereof, it seems . . . that working by night [should be put an end to] in order such false work and such perils to avoid."—Articles of the Spurriers, *Memorials of London*, pp. 226-228.

² Ordinances of Lorimers, *Liber Custumarum*, p. 78. Articles of Joiners and Saddlers, *ibid.*, p. 81.

new, or new things with old, by reason whereof the good things may be impaired by the old; nor yet, things of one price, or of one sort, with other things of another price, or of another sort. . . . No person shall dub any manner of wares:—that is to say, by putting in a thing that was in another bale, and then dressing the bale up again in another manner than in the form in which it was first bought; so as to make the ends of the bale contain better things than the remainder within the bale; by reason whereof the buyer may be deceived, and so lose his goods. . . . No one shall moisten any manner of merchandise, such as saffron, alum, ginger, cloves, and such manner of things as may admit of being moistened; that is to say, by steeping the ginger, or turning the saffron out of the sack and then anointing it, or bathing it in water; by reason whereof any manner of weight may be increased, or any deterioration arise to the merchandise.”¹ “No one of the . . . trade [of Pelterers] shall work together old and new materials of his own; no one working at new ‘werk’ shall sell or buy old furs, or any manner of old budes, as those who do so are held suspected of mixing old and new together”;

and no one should mix together seasoned and unseasoned or superior and inferior furs.” Lead brought into the city or old lead should not be bought for resale, and “all [plumbers] as well poor as rich, shall be partners therein, at their desire.”² Fishmongers might not go beyond certain limits (the chapel or the Bridge, Castle Barnard and Jordan’s Quay) to meet fish, or buy them in ships before the ropes were ashore, on pain of forfeiting the fish bought. Strangers were not to buy fish of strangers, nor was a freeman to be in partnership with a stranger. Fish were not to be sold at retail on the quay, but only in the two fish-markets in London. Regrating of fish was not permitted until the king had first bought what

¹ *Memorials of London*, pp. 120, 121.

² Ordinances of the Pelterers (1365), *Memorials of London*, pp. 238, 239.

³ Ordinances of the Plumbers (1365), *Memorials of London*, p. 320.

he wanted in the market; likewise dealers in poultry were not allowed to go out of the city to meet incomers for the purpose of forestalling, but were to buy in the city, after buyers of the king, barons and citizens should have bought what they wanted—*i. e.*, after the third hour and not before.¹ While the sale of victuals by the producer directly to the consumer was generally favored, the sale of other goods by foreigners at retail was forbidden.

“Whereas foreign folk of divers countries do bring to the . . . city [of London] divers manners of hats to sell, and carry them about the streets, as well before the houses of freemen of the said trade, as elsewhere; and thereby bar them of their dealings and of their sale, so that the freemen of the said trade in the city are greatly impoverished thereby; it is agreed that no strange person bringing hats to the said city for sale, shall sell them by retail, but only in gross, and that, to the freemen of the city on pain of losing the same.”²

Baskets for fish were to be of proper size, were to contain only one kind of fish, and were not to be “dubbed” (filled with better fish on top than below),³—an offence punished by imprisonment and an order that the offender be “held as a cheat.” Sturgeon that came in barrels were to be of one taking and one salting. Fresh fish were not to be bought or sold for resale before sunrise or salt fish before prime. As to oysters and whelks, he alone who got them must bring them to the city, and boat-loads of them might not be sold in gross before noon. Fish arriving in the night were not to be unloaded until sunrise, unless the weather should be rainy, and then they should lie

¹ Statutes of Poulterers, *Liber Custumarum*, p. 82.

² Articles of the Hatters, *Memorials of London*, p. 240.

³ “Dubbing,” or a similar deceit, seems to have been quite universally anticipated. It was also provided in the ordinances of the Waxchangers that candles should be made of as good wax within as without.—*Memorials of London*, pp. 300–302.

upon the quay of the city in the keeping of the sergeant of the street, until sunrise.

“ No manner of fish that comes by land in baskets shall be harbored in shops or in houses; but [the dealers] shall sell the same before their shops in view of the people; save as to the reputable men of the trade, who may harbor their own fish upon view of the sergeant; provided that, without concealing or disposing of anything, they fully [bring] the same to market for sale on the morrow, under pain [of forfeiting them].”

“ No man shall commit forecheap (preëmption or forestalling) against another in dealing . . . but the reputable men of the trade shall make their purchases . . . in a fair manner, without injury done to any other person, and without any such forecheap; and neither for anger nor for spite, shall any vendor hold his fish too dear: and if vendors do so, the mayor and reputable men shall assign proper persons to assess the same.”¹

Likewise the size of nets to be used at certain times and in certain places was minutely regulated.² Even the maintenance of credit (in its narrow sense) was roughly protected: “no butcher [shall] sell . . . his wares, after he has once or twice failed in his payment, until such time as he shall have fully paid up all that he is in arrear; this in order to destroy the bad repute of the trade.”³ No thief was to remain among the Tapicers, but was to be removed and punished.⁴ Conviction of a felony entailed the loss of membership in the gild. Defence against bad debtors was provided:

“if the . . . creditors, to whom the debt is due, shall warn the other folks who shall serve such their debtors, that such sum is so due to them, then, in such case, if after the said

¹ *Liber Albus*, pp. 323-334.

² *Liber Custumarum*, pp. 116, 117.

³ *Memorials of London*, pp. 179, 180.

⁴ *Memorials of London*, pp. 178, 179.

warning they shall serve them, the furriers who shall have been so warned shall be bound to pay the debt to such creditors, in case the debtors shall not give security to the said creditors for the debt that to them is so due."¹

It followed, from the close control to which each craft was subjected, that members of one craft should not interfere in the work of other crafts, or that subdivisions of a craft should be strictly confined to their own kind of work; *e. g.*, no maker of "tourte" bread was to make white bread for sale, or *vice versa*.² Likewise the secrets of each trade or craft were to be preserved inviolate by its members.³ The prices of goods and the wages of labor were determined. If buyers should pay or sellers accept more than the legal price, it was a punishable offence. Likewise if masters should pay or men accept more than the legal rate of wages, they were fined. "And if the men are rebels and contrarious, and will not work, then, the four masters shall have power to take them before the mayor and court of Gihald of the town, to be there dealt with according to law and reason."⁴

The ordinances of the craft gilds, except to the extent that infractions of them were punished in the periodical hallmotes, were enforced in gild courts held by gild officers, gild courts held by town officers or in the town courts themselves. In the two latter cases, the

¹ Ordinances of the Furriers (1364), *Memorials of London*, p. 294.

² See also p. 170, *supra*.

³ "No person of this Ffraternity from henceforth shall discover or disclose any of the lawfull secrets concerning the feats of merchandizing in their own occupation or any secret counsell of the said ffraternity which ought of reason and conscience to be secretly kept without any utterance thereof to any other person of another mystery and out of the same fraternitie to the hurt and prejudice of this mysterie upon the penalty and fforfeiture of flyve pounds, to be paid without any pardon as often as and when such case shall happen."—*Memorials of the Merchant Taylor's Company* (Clode), Ordinances of 1613, p. 215.

⁴ Gild of Fullers of Bristol; Smith, *English Gilds*, pp. 283-286.

gild officers acted largely in the capacity of prosecutors. The officers elected by the gilds had the power to search the shops and houses of the members at all times,¹ and the men of a trade or craft were usually required to live (and work) in the same neighborhood,² and work within stated hours for the purpose of making the work of searching more effective; for the same purpose, nearly all transactions had to be conducted in the market-place or in such places and under such circumstances that they would afford publicity of their nature.³ If defectively made ("false") goods should be discovered, they were brought before the court for destruction, confiscation⁴ or amendment; punishment by confiscation of goods, imposition of fines, imprisonment and expulsion from the gild varied with the nature and grade of the offence. For the purpose of enabling searchers to trace false goods to their makers, the craftsman was very often required to put his private mark on all articles made by him and to leave a copy of it with the searchers; a mark was also used by

¹ According to the ordinances of the Glovers, their wardens had the power to search even the houses of persons not of the trade for the purpose of discovering whether such persons had enticed servants of craftsmen to make gloves for them secretly in their houses.—*Memorials of London*, pp. 245–247.

² "It is ordained that all the freemen of the said trade shall dwell in Walbrok, Cornhulle, and Bogerowe, and not in other foreign streets in the city; that so, the overseers of the trade may be able to oversee them. For if they do not dwell together in the said streets, the overseers cannot duly do their duty, or visit them; and then those dwelling elsewhere in foreign streets may make deceits in the said trade, against the ordinances [of the trade] and without any punishment for the same."—Ordinances of the Pelterers (Skinners) (1365), *Memorials of London*, p. 330.

³ For that reason it was provided in the articles of the Blacksmiths (in 1372) that all who wanted to send their work out of their shops for sale should send it to "Graschirche," or one of two other places, there to be kept for sale in open view and not to be carried about the city.—*Memorials of London*, p. 361.

⁴ Bread forfeited by bakers for deficiency in weight was usually given to the prisoners in Newgate.—*Memorials of London*, p. 121.

the wardens and searchers as a certificate of inspection and approval; unmarked articles were sometimes subject to summary confiscation or destruction, whatever their quality; and counterfeiting marks was a serious offence. Turners were required to put their marks on all wooden measures turned by them.¹ "Helmetery and other arms forged with the hammer" were not to be exposed for sale until marked by the wardens after assay of them; each helmet-maker had his own "sign," which might not be counterfeited by another.²

In some cases, town and gild courts had concurrent jurisdiction over persons and goods involved. Disputes between fellow-gildsmen were usually determined by the gild courts. If a gildsman should be impleaded in the town court, the gild officers might demand that the controversy be removed to their own court, even when the complaint had been made by a non-gildsman.³ When questions in dispute were proper to be submitted to a jury, it was sometimes required that the jury be composed partly of gildsmen and partly of others. The gild courts were presided over by the regular head officers of the gild and not by a separate judiciary. From some gild courts an appeal might be taken to the mayor, as from that of the weavers instituted in the twenty-eighth year of the reign of Edward I.⁴

The revenues of the craft gilds were derived from fees for binding apprentices and admitting new members to the freedom of the craft, and from the annual dues paid by the brethren, as well as from fines and amercements for infractions of gild ordinances—though the latter source of revenue was usually absorbed wholly or in part by the municipalities and state. Some charges were also levied on goods in stages of exchange, as on cargoes of fish

¹ *Memorials of London*, p. 235.

² Articles of the Heaumers, *ibid.*, pp. 237, 238.

³ *Liber Custumarum*, p. 123.

⁴ *Ibid.*, p. 126.

brought to the markets of London for sale, and on manufactured goods inspected. Much property was also bequeathed to the gilds by members on their death, to be used by them for general purposes, or to be administered by them for some special religious or charitable purpose, with the usual stipulation that masses and prayers be provided for the repose of the donor's soul.

If such were the normal constitution and activity of the craft gilds, there remain to be considered the historical changes through which they passed in (*a*) their internal relations, (*b*) their relations to town and nation and (*c*) their relations to trade and industry and to their other organizations.

(*a*) The changes in their internal relations were very similar to those that took place in the towns and merchant gilds as already detailed.¹ The membership, substantially co-extensive with the craft of a town, at first participated fully in the life of its organization in the gild; and maintained an approximately pure democracy in it. But even before a body of advisers to the officers had a constitutional status in the gild, steady influence was exerted on the government of the gild by its "reputable men"²; in some of the more important gilds, the ordinances early contemplated recourse to them for advice by the masters and wardens in the administration of their offices.³ The earlier somewhat indefinite body

¹ *Supra*, pp. 173-176.

² Ordinances of the Furriers, *Memorials of London*, p. 293. Articles of the Bowyers and Fletchers, *ibid.*, p. 350.

³ For example, it was one of the ordinances enacted by the Cutlers in 1380 that "no man shall be enfranchised by redemption in the said trade, except on the testimony as to his ability of six reputable men of the trade; that is to say, the four wardens, and other two reputable men of the trade." (*Memorials of London*, p. 441.) In 1366, it had enacted in the Articles of the Flemish Weavers in London that their bailiffs should not "make any congregation of the people of the trade, nor any collection of gold or silver in the said trade, alms only excepted, without the assent and ordinance of twenty-four of the best men of the said trade," to be chosen at

VOL. I.—12.

of "reputable men" hardened by the end of the fourteenth century into a definite organic part of many gilds and was usually referred to as "the eight," "the thirteen," "the twenty-four" or other number¹; by the sixteenth century it was known as the court of assistants and had absorbed most of the vital powers of the gild,²

the direction of the mayor and aldermen for the time being.—*Ibid.*, pp. 331, 332.

By the ordinances of the "Whit-tawyers," if a master had received a servant who had not made a fine to his first master, the second master should make it at the discretion of the overseers or of four "reputable men" of the trade.—*Ibid.*, pp. 232-234.

¹ Gild of Tailors of Exeter; Smith, *English Gilds*. Leuche's Trust [Smith calls this a gild].

In 1525-6 (March 11) William Leuche, living in Birmingham made a deed of feoffment to certain persons, but requiring them to pay the profits and revenue to his wife during her life, after her death, to distribute them in "Warkis of Charyte for the heylthe of the forseid wylliam leuche sowlle and Agnes his wyffe." Two of the feoffers with consent of the others, or the major part of them, to receive yearly rents and profits and account for them at an annual meeting. To distribute them "for the repairing the ruinous waies and bridges in and about the same Towne of Birmingham, where it shall want; and for default of such uses, should bestowe the rents and proffitts of the premisses to the poor liveing within the Towne aforesaid, where there shall be most need, according to the appointment and disposicioun of the said feoffers for the time being, or the major part of them; or to other pious uses, according to the discrecioun and appointment of them, the feoffers, or the major part of them. When seven have died, the remaining seven to enfeoff certain other 'honest men,' who should reñfeoff the said seven + seven other honest men of Birmingham 'soe, that is to say, that the said feoffment shall be renewed for ever in the same manner as is above mencionned.'"—Toulmin Smith, *English Gilds*, 251-258.

² Ashley, *English Economic History*, vol. i., part ii., p. 132. Possibly the court of assistants ought to be considered, as by Ashley, the constitutional successors of the liverymen: "But although the liverymen had great dignity and many privileges, even they did not retain the government of the country in their own hands. It passed from them to a still more select body, the Court of Assistants; which, beginning as a sort of informal committee composed of the wealthier brethren in the livery, especially such as had served the higher offices in the company, became a limited coöptative council, wellnigh absolute in the affairs of the society."—*Ibid.*, pp. 131, 132.

the enactment of ordinances, the admission of members and the election of officers, including the filling of its own vacancies by co-optation; it was also the body from which the gild officers were chosen, and of which they became members again by virtue of their having "passed the master's or prime warden's chair."¹

Besides the intrusion of the court of assistants into the gild constitution, distinctions arose among the members as such; well-defined classes were the outcome of differences in wealth. Though the differentiation was caused to some extent by the use of a distinctive dress,² its effect must have been confined to making plainer and more manifest the effects of the more fundamental causes; the adoption of a distinctive dress must have been largely incidental to the influence of general tendencies. At all events, many of the companies into which the gilds developed in the sixteenth century contained a body of wealthy members "called" by the court of assistants from the general membership and known as the "Livery" or "clothing,"³ because their earlier exclusive ability to afford a distinctive dress had grown into an exclusive right to wear it. Even in the social-religious gilds of the fourteenth century brethren had been expected to wear a livery on all public occasions, at gild meetings, and at burial services; if too poor to provide an entire suit, a hood at least was worn, which was furnished to the impecunious of some gilds at the expense of the common-box.⁴ But after the lapse of a century, assuming for the moment the identity of the two kinds of gilds, the class of members able to provide their livery and attend all the banquets and semi-public functions that were coincidental

¹ Herbert, *Livery Companies*, vol. i., pp. 53-55. Nicholl, *History of Ironmongers' Company*, p. 323.

² Ashley, *English Economic History*, vol. i., part ii., p. 126.

³ Herbert, *Livery Companies of London*, vol. i., pp. 58-66.

⁴ *Supra*, p. 143.

with its use, was so distinct as to be recognized in the gild constitution. In the gild of Taylors of Exeter, at the end of the fifteenth century, it was ordained that every member who was "privileged" of the craft and of the value of twenty pounds in goods should be "of the fellowship and clothing of the master and should pay yearly twelve pence and his offering at Midsummer at their feast," while every other member, "not privileged" should pay six pence yearly.¹ In the London Livery Companies the livery became the body from which alone the officers might be elected and vacancies in the court of assistants filled.² The livery, the "clothing," at first a symbol of membership in the gild, thus became the mark of an aristocratic class within it.³

But the differentiation of classes was not confined to the higher grades of gildsmen; even before the livery and court of assistants were emerging at the top of the scale as expressions of differences in economic status, the delimitation of the system of apprenticeship and the rise of a class of wage-working journeymen were producing similar results at the bottom.⁴ In the thirteenth century, when the craft gilds had hardly attained a condition of self-sufficiency, admission of members had been left largely to the determination of the gild on the basis of the fitness and ability of applicants to "use the craft," while the dependence on apprenticeship had been slight. In the two following centuries the relation was reversed; apprenticeship became the chief, in some gilds the sole channel (except that of family relationship) through which craft-membership could be attained.⁵ At the same

¹ Smith, *English Gilds*.

² Ashley, vol. i., part ii., p. 132.

³ Cf. Ashley, *Economic History*, vol. i., part ii., p. 130.

⁴ Ashley, *English Economic History*, vol. i., part ii., p. 84.

⁵ In the ordinances of the Leathersellers (of London), made in 1398, it was provided "That from henceforth no one shall set any man, child, or woman, to work in the . . . trade, if such person be not first bound

time apprenticeship itself and the relations of masters and apprentices involved in it assumed definite and settled form. In the fifteenth century the term of years, which had previously been left largely to agreement in each case, came to be limited to "at least seven years,"—in fact, such limitation had been recognized as one of the "customs of London." The master was to provide his apprentice with food and clothes and other necessities and was to teach him the craft; on the other hand, the apprentice was to obey his master and not marry without his consent, and to submit to be reasonably ("duly but not otherwise") punished.¹ The enrollment of the apprentice before the town officers at the beginning and end of his apprenticeship was uniformly required. The number of apprentices was also restricted in various ways. To prevent the attraction of labor from agriculture to the trades and crafts after the economic upheaval consequent on the ravages of the Black Death, Parliament enacted that all who had followed agriculture until twelve years of age should continue to follow it² and that none might become apprentices to craftsmen whose fathers were not able to pay twenty shillings a year.³ Bondmen and villeins were declared ineligible to apprenticeship.⁴

apprentice, and enrolled, in the trade; their wives and children only excepted, according as the custom and ordinance of the city [of London] do will and demand."—*Memorials of London*, p. 547. But see also note, p. 166 *supra*.

¹ Ashley, *English Economic History*, vol. i., part ii., pp. 85, 86.

² Ric. II., c. 5, St., II., 57.

³ Act of 1406, 7 Henry IV., c. 17; Statutes, II., 157.

⁴ In 1387, "for avoiding disgrace and scandal unto the City of London, it was, by [the] Mayor and the Aldermen, with the assent of the Common Council of the said city ordained:—that from henceforth no foreigner shall be enrolled as an apprentice, or be received into the freedom of the said city by way of apprenticeship, unless he shall first make oath that he is a freeman and not a bondman or [villein]. And whoever shall hereafter be received unto the freedom of the said city, by purchase or in any other way than by apprenticeship, shall make the same oath, and shall also find six

Such large fees were demanded at the binding of the apprentice and at his admission to the freedom on the conclusion of his term as to cause a restriction of the number of apprentices and invite interference by King and Parliament.¹ The number of apprentices that a master might have before the fifteenth century seems to have been limited only by the ability of the master to sustain and instruct them. Other restrictions, however, gradually found enforcement in the codes of gild regulations, by which the number of apprentices should depend on the rank of the master in the gild, or by which more than one might not be bound without the consent of the wardens of the gild or the chamberlain or other officers of the city. As compared with the number of journeymen that a master might employ, it became the rule that he might have one apprentice for the first three journeymen and one for each additional journeyman—a proportion that was sanctioned by Elizabeth in the Statute of Apprentices² for the crafts of clothmakers, fullers, shearmen, weavers, tailors and shoemakers, for the purpose, probably, of keeping them in harmony with the system generally prevalent in current industry.³

At first it was possible, in fact as well as in theory, to set up as a master and employer of others immediately on the completion of the term of apprenticeship; but very early even the small amount of capital required in reputable citizens of the said city, who shall give security for him, as such from of old hath been wont to be done. And if it shall so happen that any such bondman is admitted unto the freedom of the said city upon a false suggestion, the chamberlain being ignorant thereof, immediately after it shall have become notorious unto the Mayor and Aldermen that such person is a bondman, he shall lose the freedom of the city, and shall pay a fine for his deceit. . . .”—*Liber Albus*, p. 388.

For an example of a previous loss of the freedom of the city on the basis of bondage, see *Memorials of London*, pp. 58, 59.

¹ See Act of 1531, 22 Henry VIII., c. 4; Statutes, III., 321.

² 5 Elizabeth, c. 4.

³ Ashley, *English Economic History*, vol. i., part ii., p. 92.

mediæval trade or industry necessitated the lapse of a few years before the potential master could become an active one. During such time he was a journeyman, or servant, as he was more usually called. Before the fourteenth century there was probably no great inequality in the numbers and status of masters and journeymen but the further rapid development of trade and industry and of the factor of capital in them during that century decreased the proportion of masters and increased that of journeymen,¹ while they became further separated in the social and economic scale. And the movement was made more rapid by the more or less arbitrary exaction of large fees for the admission to the freedom and particularly to the status of a master and employer; the fees were so large and plainly opposed to the public welfare that both towns and nation protested.² The rise of a well-defined class of wage-working laborers in the journeymen produced a body of distinct social interests³ at the same time

¹ The reasons assigned by various writers for the increase of the class of laborers after the middle of the fourteenth century are collected by Professor Ashley: "An increase of population leading to a superfluity of labor; a widening market and consequently a greater importance of capital, now that master artisans began to buy their own materials, and manufacture for the anticipated demand of the general public; an influx of labor from the country districts, following upon the gradual relaxation of the bonds of villenage; or, finally, the sheer selfishness of the masters in limiting their own members."—*English Economic History*, vol. i., part ii., p. 102.

² See Statute of 1536, 28 Henry VIII., c. 5; Statutes, III., 654. Oxford had enacted ordinances for the same purpose in 1531.

³ That the interests of masters and journeymen were at variance and that the latter appreciated their identity of interests as a class appear plain from an ordinance of the Shearmen of London in 1350: "Whereas heretofore, if there was any dispute between a master in the said trade and his man, such man has been wont to go to all the men within the city of the same trade; and then, by covin and conspiracy between them made, they would order that no one among them should work, or serve his own master until the said master and his servant, or man, had come to an agreement; by reason whereof the masters in the said trade have been in great trouble, and the people left unserved;—it is ordained that from henceforth, if there be any dispute moved between any master and his man in the said trade, such

that the governing body was shrinking so as to exclude not only the mass of journeymen but even many of the lesser masters. As the result of both movements the journeymen in many crafts assumed a separate organization, with more or less autonomy, being either almost distinct from that of the masters, distinct in organization but subject to the other, or merely recognized as a distinct administrative group within the wider body.

The tendency towards the formation within crafts of separate organizations of workmen as distinguished from employers, to which Ashley¹ has been the first English writer to assign due importance, is best exemplified, in the present condition of the historical evidence, in the career of the Bachelor or Yeoman Company of Taylors. In 1415, a complaint was lodged with the mayor and aldermen of London that the journeymen and servants of the tailors were living apart by themselves in companies without the license of the officials of the city or of the Taylors' Company and that they were in the habit of assembling in great numbers and "making conventicles"

dispute shall be settled by the wardens of the trade. And if the man who shall have offended, or shall have badly behaved himself towards his master, will not submit to be tried before the said wardens, then such man shall be arrested by a sergeant of the Chamber, at the suit of the said wardens, and brought before the Mayor and Aldermen; and before them let him be punished, at their discretion."—*Memorials of London*, pp. 247, 248. The same preamble and ordinance appear in the "Regulations of the Trade of the Alien Weavers in London" (1362), *ibid.*, p. 307. Almost a half-century earlier, in 1303, the Cordwainers had found it advisable to forbid by ordinance that their journeymen should meet to make provisions to the prejudice of the craft or the damage of the common people, on pain of imprisonment.—*Liber Custumarum*, p. 84. For an account of the disputes between the Saddlers and their "Yomen," see *Memorials of London*, pp. 542–544; for similar disputes in the London Gild of Taylors, see Clode's *Merchant Taylors' Company*, pp. 609–612. The increasing number of rules for the regulation of the classes in their intercourse is evidence of the want of harmony between them. Graduated fees for the several classes were at once the cause and effect of the crystallization of differences between them.

¹ In *English Economic History*, vol. i., part ii., pp. 106–124.

in divers places and beating, wounding and ill-treating persons, and especially that they had assaulted a master of the craft. The master and wardens of the craft, called before the mayor and aldermen to answer why they permitted "their servants and apprentices to inhabit houses of this kind alone by themselves, in companies, without a superior to rule them, and to commit and perpetrate these evils and crimes so lawlessly," expressed great regret and asked that certain yeomen be summoned. After an examination of the yeomen, the mayor and aldermen decided

"that the servants of the aforesaid trade shall be hereafter under government and rule of the Master and Wardens of the aforesaid trade, as other servants of other trades in the said city are, and are bound by law to be, and that they shall not use henceforth livery or dress, meetings or conventicles, or other unlawful things of this kind,"

and ordered them to leave the houses within four days. In 1417, however, they asked permission to have an annual meeting in the church of St. John Jerusalem on St. John's Decollation Day and there "to offer for the deceased brothers and sisters of the brotherhood," but permission was denied them "unless with and in the presence of the Masters of the said trade." In 1613, the Yeomen Company, from the ordinances of the Taylors' Company at that time, appear to have consisted of two classes,—(1) bachelors in "foyne" and those in "budge," and (2) freemen or brethren elected to be recorded on the company's books as such,—and to have been governed by four wardens substitute elected by the Taylors' Company from among the yeomen and assisted in the administration of their offices by "sixteen" elected by the yeomen from their own number. The wardens substitute acted under the direction of the Court of Assistants. The Yeoman Company had a separate treasury, clerk,

bedel, benefactions and alms. Merchants and yeomen held their feasts on different festival-days of the church, and no social equality or relationship existed between them. Each had the care of its own poor, but the Merchant Taylors held estates in trust for the yeomen, and had control of their funds. Disagreements between the wardens substitute and the sixteen were frequent. In 1649, the workmen modestly asked that two of the substitutes be practical tailors and that orders for the purpose of preventing the competition of foreigners be enforced. In 1661, the wardens substitute were not sworn in, the separate organization of the Yeomen Company ceased to exist, and its business was taken in hand by the Merchant Company.¹ Likewise "ordinances, articles and constitutions" were "ordained and granted" by "the worshipful masters and wardens with all the whole company of the craft of Blacksmiths of London, to the servants of the same craft" in 1434, by which they had their own wardens and a separate organization; there was a provision, however, reserving an appeal from the wardens of the yeomen to the master of the craft.²

Here and there among the records are found indications that a distinction, though by no means clear or definite, had grown up between apprentices and servants or journeymen, such as must be assumed in interpreting the ordinance of the Blade-smiths "that no one of the trade shall teach his journeymen the secrets of his trade, as he would his apprentice."³ So, too, it was provided by the Bachelor or Yeomen Company of Taylors that its members should not reveal its secrets to a "master [master's?] prentiss." Possibly apprenticeship was considered in

¹ Clode, *Early History of the Merchant Taylors' Company*, chapter on "Bachelor or Yeomen Company of Taylors," vol. i., pp. 60-74.

² Ashley.

³ *Memorials of London*, p. 570. Cunningham, *Growth of English Industry and Commerce*.

some crafts a preparation for mastership, the rank of employer, as distinguished from that of a simple workman. Such a distinction was by no means universal; the apprentices usually merged in the class of workmen or laborers.

By reason of the social movements within the membership of the organized classes of tradesmen and craftsmen, the "freedom of the craft" came to have a new significance. Formerly carrying with it the right to participate in the control of the economic relations of the entire body, it finally conveyed merely the right to follow a particular vocation in a town. Speaking broadly, the craft gild, company or mistery developed, before the end of the sixteenth century, from a self-governing organization of men of a craft into a close corporation imposing from above a code of regulations to which the men of the craft should conform. The solidarity of the earlier organizations had been disintegrated by the formation and crystallization of classes within the crafts with bodies of interests rather in opposition than in harmony. The social conditions under which the men of a craft had a common interest in the craft itself were on the point of giving way to new conditions under which separate classes in the crafts would have greater affinity to corresponding classes in other crafts than to other classes in their own crafts; to use Cunningham's apt phraseology, industrial society in the "gild system" was divided into classes by perpendicular lines; the growth of class interests would eventually lead to the substitution, as it has in the present century, of a division of horizontal lines.¹ The power to regulate industry, as reposed in the original gilds, was hardly exceptional in the society of which they formed a part; it was not so much a privilege, a right restricted to a person among his fellows, as a public right, the right to participate in the life of a social unit, though

¹ *Growth of English Industry and Commerce*, vol. i., p. 339.

assuredly a local and occupational unit; after the development described, however, the control of industry, as far as it was exercised, became more nearly a privilege, an exceptional power, a right in derogation of the rights of others, even within the small unit.

It was somewhat broadly stated, in describing the normal craft gild, that it "had all the religious and fraternal characteristics of the social-religious gilds, and merchant gilds."¹ Perhaps the statement in such a general and positive form is not fully justified by the historical evidence, unless it be assumed that many craft organizations were wide variations from the normal type. The gilds (in the broad sense of the term) were of three kinds, according to their origin, (1) those of spontaneous origin, (2) those whose origin was due rather to the town's need of police machinery, virtually compulsory in origin, and (3) the later bodies in which were reposed a body of privileges granted by the Crown. To the first the term gild was most properly applied; to the second, the term craft or mistery; and to the third, the term company; though usage was far from consistent or invariable. There is some slight historical evidence on which to base a theory that the first class were derived from social-religious associations by the assumption of economic functions. The membership of some of the social-religious gilds consisted wholly or predominantly of craftsmen and took their name from their craft,² though few of them appear to have had ordinances for the control of trade and industry.³

¹ *Supra*, p. 164.

² *E. g.*, The Gild of Fullers and Gild of Tylers, of Lincoln; the Carpenters' Gild, the Saddlers' and Spurriers' Gild, the Brotherhood of Barbers, the Gild of Pelyters, and the Tailors' Gild, of Norwich; the Shipmen's Gild of Lynn, and the Gild of Smiths of Chesterfield. "No tyler nor 'poyntowr' shall stay in the city [of Lincoln], unless he enters the gild," while the Gild of Fullers was founded by "all the brethren and sisteren of the fullers in Lincoln."

³ The Gild of Tylers mentioned in the preceding note ordained that "if any brother does anything underhanded and with ill-will, by which another

There is very slight evidence that the gilds of the second class developed the social-religious and fraternal features; or if they had them, that they manifested them in the same organization as the economic features. The third class were clearly successors of the first two classes and universally had the features in question. Among the many sets of craft ordinances found in the records of the city of London, as they appear in the *Liber Custumarum*, *Liber Albus* and *Memorials*, those of the "Whit tawyers" alone contain provisions of a social-religious nature¹;

will be wronged in working his craft, he shall pay to the gild a pound of wax, without any room for grace," an ordinance on the border-line between religious fraternity and industrial organization. Among the many ordinances of the Gild of Fullers, also mentioned in the preceding note, were a few of an industrial nature: "None of the craft shall work on the trough [*i. e.*, full cloth by treading it with the feet] and none shall work at the wooden bar with a woman, unless with the wife of a master or her hand-maid"; working on Saturdays after noon or on feast-days of the Church was forbidden; strangers were admitted to work among the brethren and sisters and enrolled on the payment of a penny to the wax; "if any one wishes to learn the craft, no one shall teach it to him until he has given two pence to the wax."—Smith, *English Gilds*.

¹ "In honor of God, of Our Lady, and of all Saints, and for the nurture of tranquillity and peace among the good folks the Megucers, called 'Whit-tawyers' [they have] ordained the points: . . . That they will find a wax candle, to burn before Our Lady in the Church of All Hallows. . . . That each person of the said trade shall put in the box such sum as he shall think fit, in aid of maintaining the said candle, . . . If by chance any one of the said trade shall fall into poverty, whether through old age, or because he cannot labor or work, and have nothing with which to help himself; he shall have every week from the said box seven pence for his support, if he be a man of good repute; and after his decease, if he have a wife, a woman of good repute, she shall have weekly for her support seven pence from the said box, as long as she shall behave herself well and keep single. . . . If any one of the said trade shall have work in his house that he cannot complete, or if for want of assistance such work shall be in danger of being lost, those of the said trade shall aid him, that so the said work be not lost. . . . And if any of the said trade shall depart this life, and have not wherewithal to be buried, he shall be buried at the expense of their common-box; and when any one of the said trade shall die, all those of the said trade shall go to the vigil, and make offering on the morrow . . . that no one of the said trade shall behave himself the more thoughtlessly,

though the bodies of ordinances regularly approved by the city government may not, as suggested by Ashley,¹ have shown the social-religious features of the craft; there was no reason for the enrolment at the Guildhall of any but the economic ordinances.*

It is in respect to these features that the Reformation in the sixteenth century worked some important changes, though the extent of the changes has been exaggerated to include other changes. The religious features of the guilds were, of course, those primarily affected; the other features were affected only secondarily and derivatively. Such property as the guilds held subject to "superstitious uses" was confiscated; in general, if only part of the income of parcels of property was devoted to such uses, they were assumed by the Crown only to such extent as they were so devoted, the previous "superstitious" burden being resolved into a rent charge payable to the Crown.² The element of common life involved in the religious life of the guilds under Catholicism was an important one and its partial destruction by the Reformation removed a strong bond from the interrelations of the guildsmen.

(b) The earliest evidence of English craft guilds is in the Pipe Roll of the thirty-first year of Henry I., in which the Weavers of London, Lincoln, Oxford, Huntingdon and Winchester, the Fullers of Winchester and the Cordwainers

in the way of speaking or acting amiss, . . . and if any one shall do to the contrary thereof, he shall not follow the said trade until he shall have reasonably made amends."—*Memorials of London*, pp. 232-234.

¹ See *English Economic History*, vol. i., part i., pp. 91, 92.

² Thus, analogously, the Gild Merchant of Coventry, founded in 1340, made a return in response to the demands of Richard II. in 1389, but though it introduced its return with a statement that the gild had been formed by merchants of the city, "troubled about their merchandise, through being far from the sea," no ordinances of an economic nature were reported, the return being confined to social-religious ordinances, such as the king had demanded.—Smith, *English Guilds*, p. 226.

* Ashley, *English Economic History*, vol. ii., pp. 134-158.

of Oxford appear to have made payments to the exchequer for their recognition by the Crown. So, too, the Weavers of London, York, Lincoln, Huntingdon, Nottingham and Oxford, the Fullers of Winchester, the Bakers of London, and the Corvesars of Oxford are mentioned in the Pipe Rolls of Stephen, Henry II., Richard and Henry III., as charged with or rendering annual payments to the exchequer for their gilds.¹ The policy of Henry II. seems to have been to give autonomy to the crafts as compared with the towns. He issued a charter to the weavers of London that ensured them virtual independence of the city government.² In the twenty-sixth year of his reign (1180) eighteen gilds of London, including the Goldsmiths, Butchers, Pepperers, and Cloth-finishers, were amerced as adulterine (set up without warrant).³ But it is not to be inferred therefrom that the craft gilds continued to sustain direct relations to the king and to derive their powers from him. They had rather the status of independent municipalities and soon came into collision with the municipal bodies of the towns; eventually they had to yield to them and enjoy their rights as communities subject to the towns. During the reigns of Richard and John the towns acquired powers so substantial that a return to the policy of Henry II. by Henry III. was not successful in maintaining a direct connection between the Crown and the gilds. The

¹ Madox, *History of the Exchequer*, vol. i., pp. 337-341, with notes referring to Pipe Rolls.

² "Sciatis me concessisse Telariis Londoniarum Gildam suam, in Londoniis habendam, cum omnibus libertatibus et consuetudinibus quas habuerunt tempore Regis Henrici, avi mei; et ita quod nullus nisi per illas se intromittat infra civitatem de eo ministerio, et nisi sit in eorum Gilda, neque in Sudwerke, neque in aliis locis Londoniis pertinentibus, aliter quam solebat fieri tempore Regis Henrici, avi mei. . . . Ita quod singulis annis inde reddant mihi duas marcas auri. . . . Et prohibeo nequis eis super hoc aliquam injuriam vel contumeliam faciat, supra decem libras foris facturæ. . . ."—*Liber Custumarum*, p. 33.

³ Madox, *History of the Exchequer*, vol. i., pp. 562, 563.

charter of the Weavers of London, which had been granted by Henry II., was annulled and their gild destroyed by John in return for a payment by the City, but was confirmed by Henry III. in an "inspeximus" charter¹; likewise the weavers of Oxford [had] fined in a cask of wine, to have a writ commanding the mayor and provosts of Oxford to let them have the same liberties in that city, as well in "cloth-working as in other things, which they had in the times of King Henry II., King Richard, and King John."² From the middle of the thirteenth through the fourteenth and fifteenth centuries the normal status of the gilds was one of subjection to the towns.³ Some of them must have had an independent origin and, as already suggested, there is reason to believe that they first existed in the form of social-religious gilds; but many others were only the result of an organization for police purposes imposed on bodies of tradesmen and craftsmen by the towns. Even when recognized by the king, they were to look to the town for their powers.⁴

The relations of the gilds to the towns appear most plainly in the manner of enacting and enforcing their ordinances. They were sometimes enacted by the town and nothing but their enforcement left to the gild; even when the gild had the power to enact its own ordinances, it had the obligation of enforcing other ordinances emanating from the town and statutes enacted by the king and Parliament. More frequently the gilds formulated their ordinances and presented them to the town govern-

¹ *Liber Custumarum*, p. 48.

² Madox, *History of the Exchequer*, vol. i., p. 414.

³ In the reign of Edward I., when, in compassion for their poverty, he reduced the ferm of the weavers of Oxford from a mark of gold to forty-two shillings yearly, it was to be rendered "per manus majorum et Ballivorum suarum Oxoniæ qui pro tempore fuerint," instead of directly to the officers of the exchequer. See the order from the King to the barons of the exchequer, in Madox's *History of the Exchequer*, vol. i., pp. 339, 340, note (z).

⁴ See note 2, page 193, *infra*.

ment for enactment, approval or confirmation,¹ though sometimes with the express reservation of the right to amend them at their will without consulting the gilds.²

From the formal language found in the gild ordinances, such as those collected in the *Liber Custumarum* and *Memorials of London*, one might be inclined to infer that little independence had been exercised by the gilds, but it is probably true that the gilds were given a pretty free hand; there appears to be no record of a petition for the approval of ordinances that was denied, though it is doubtful whether such a denial would have found a place in the public records if it had been made; the language used in the town records must have been purely formal in many cases; it seems that in one case the gild had been enforcing ordinances not enrolled at the Guildhall,

¹ As an example, the language used in the ordinances of the Tapicers may be quoted: "These are the Ordinances of the Trade of Tapicers, made by the good folks of the said trade: the which Ordinances were approved and accepted before John de Pulteneye, Mayor, the Aldermen and the Commonalty, in the Court of Common Pleas holden [in 1331]."—*Memorials of London*, p. 178.

² "Saving always unto the Mayor and Aldermen, for the time being, power to amend and change, to curtail and adjust, the articles aforesaid at any time that unto them it may seem requisite, for the common profit, for them so to do; and also, to make due and rightful correction in behalf of those who shall complain that under color of any of the said Articles they have been wrongfully aggrieved."—Ordinances of the Cutlers, *Memorials of London*, p. 441.

So, too, in Bristol, in affirming, ratifying and confirming ordinances proposed by the fullers, the mayor, sheriff and burgesses say: "That if any ordinance, point, or addition, touching the said craft, may be profitable, as well to the town as to the craft, then, by the advice of us and the masters of said craft, amendment thereof shall be made, these ordinances notwithstanding."—Smith, *English Gilds*, pp. 283-286.

The ordinances of the butchers, as an exception to the general rule, appear to have been enacted by the mayor and aldermen, and then consented to by the craft.—*Memorials of London*, pp. 179, 180.

The regulations of the armourers are said to have been made *with their assent*, in the presence of the mayor, aldermen and sheriffs.—*Ibid.*, pp. 145, 146.

VOL. I.—13.

though it had others that had been regularly approved there.¹ The facts that the town government had not the technical knowledge necessary to judge what ordinances were best for the actual work of a craft, and that it was lax in enforcing them,² favor the presumption that the crafts were given wide powers in practice. In the fiftieth year of Edward III., when certain fullers asked that a proposed "point," forbidding the use of urine in fulling cloth, be accepted and enrolled by the mayor and aldermen of London, the latter called two successive meetings to ascertain whether the rule would be acceptable to the whole trade, and having so ascertained, granted the petition; it is significant that the merits of the proposed rule in itself were not enquired into.³

In the enforcement of its ordinances, however enacted, the gild exercised little independence. The first masters, wardens and other head officers were usually appointed by the town, though in some cases elected by the gild; their successors were uniformly elected by the gild. In

¹ See New Articles of the Pouchmakers, 43 Edward III. (1371): "To the honorable the Mayor and Aldermen of the City of London, pray the good folks, Pouchmakers of the same city, that whereas they have some Articles of that trade which are very profitable, to the common profit of the people, and not as yet enrolled; it will please you to accept these Articles to be enrolled, for the common profit of the people; . . ."—Riley, *Memorials of London*, p. 360.

² "But through frequent removal of the Sheriffs and Bailiffs, [and] through too great sufferance on the part of some of the bailiffs, the . . . articles [of the mistery] are not duly observed and are abused; by reason whereof it is proper to apply a remedy thereto. . . ."—Statutes of Fishmongers, *Liber Albus*, pp. 323-334.

In Bristol the Fullers prayed: "Whereas the said craft has, of old time, had divers ordinances enrolled . . . of record in the Gihald of Bristol . . . wherefore may it please . . . to grant to the said applicants that all their good ordinances of old time entered of record, and not repealed, be firmly held and kept and duly put in execution . . . and to grant to the said suppliants . . . new additions and points [proposed]." —Smith, *English Gilds*, pp. 283-286.

³ *Memorials of London*, pp. 400-402.

the majority of them, their searchers and overseers simply brought false goods and implements and their makers and users before the town courts¹; their functions were inquisitorial rather than judicial.² In a few gilds a court was maintained and justice dispensed by the masters and wardens, especially between gildsmen. From some gild-courts an appeal lay to the town courts.³ In one craft, at least, it was optional with the craftsman whether he would be judged by the wardens of the craft or by the mayor and aldermen.⁴ Some gilds had the power to remove cases involving gildsmen from the town courts to their own courts, though to amerce only men of their own craft.⁵ In their relations to nation and town in the enactment and enforcement of their ordinances, the gilds underwent less change than in any other. After the sixteenth century many of their powers decayed, but such as remained unimpaired were exercised in nearly the same

¹ See *Memorials of London*, pp. 107, 108, 116, 117, 135, 171, 172, 212, 214, 215, 249, 250, 529, 530, 596, 597, and in many other places.

² The powers of the Masters of the Founders were quite exceptional in this regard. "All work in the said trade that can be found falsely wrought, and made of false metals, shall be broken by the masters of the said trade."—Ordinances of the Founders, *Memorials of London*, p. 515.

³ "If any one of the . . . Trade [of Cordwainers] shall be found offending, touching the trade, or rebellious against the wardens thereof, such person shall not make any complaint to any one of another trade by reason of the discord or dissension that may have arisen between them; but he shall be ruled by the good folks of his own trade. And if he differ from them, as acting against right, then let the offence be adjudged upon before the Mayor and Aldermen; and if he be found rebellious . . . let him pay a fine to the chamber."—Articles of the Cordwainers or Taylors, *Memorials of London*, pp. 391, 392.

⁴ "As to all those of the . . . trade who do not wish to be judged by the wardens of the trade for the time being, upon matters touching the trade, the names of such shall be presented to the Mayor and to the Aldermen, and by them they shall be judged as to the wrong or falsity which they have committed. . . ."—Articles of the Cutlers, *Memorials of London*, pp. 217-219.

⁵ *Liber Custumarum*, p. 123. See also Statutes of Fishmongers, *Liber Albus*, pp. 323-334.

manner as in the thirteenth and fourteenth centuries, by the enactment of ordinances subject to the approval of national or municipal organs, and their enforcement through the medium of justices of the peace and mayors or other political officers. On the whole, gild ordinances were not so readily accorded approval during the seventeenth and eighteenth centuries as previously, but largely because the relations of many companies to the industrial activity of society had become merely nominal; moreover, the national government had assumed much more extended control over trade and industry and had left the companies a more limited field for the exercise of their powers. Within the limited field, however, the method of their activity was substantially the same as it had been when the field was wider. Even as early as the reign of Edward III. the stronger gilds had sought sanction in royal charters largely for the purpose of enabling them to hold property in mortmain, but they differed little, in their actual activity, from those that had not sought such sanction. In the fifteenth and sixteenth centuries, however, the movement became more general and operated as a process of selection, preserving the stronger gilds, particularly those that had accumulated a considerable amount of property through bequests, donations and the collection of fees, and leaving the weaker ones to decay and the surrender of their powers to national and municipal agencies. Elizabeth is said to have been opposed to the gilds, though the opposition had a wider basis than that of a mere royal policy. Recognition by the Crown became, at all events, a necessary element of corporate existence as it had not previously been, and distinguished the "companies" from the older gilds. Some of the companies acquired sufficient strength to ensure their existence only through combination of gilds. The importance of the change has been both exaggerated and disparaged. Some writers have considered the in-

corporated companies as new creations, widely separated from the gilds and crafts that preceded them; others have insisted that incorporation made no difference with the crafts and consequently left them in the same social position that they had previously occupied. The general effect of the movement was to preserve an industrial structure that industry had largely outgrown. It can hardly be denied that the second half of the sixteenth century was a period during which the older conditions of industry gave way to new ones; the incorporation of the mercantile companies acted as a perpetuation of the aristocratic control of industry into which the gild system had degenerated; in that respect it was directly in line with most of the legislation of the period, which aimed to preserve through national agencies the industrial relations that had grown up under the gild system. It is true that incorporation worked no material change in the gilds or crafts that became companies; what it did tend to do was to preserve them in the presence of an environment to which they must otherwise have succumbed.

The use of the craft gilds, with their varying degrees of autonomy, for the purpose of the police supervision of townsmen is evidence of the difficulty of extending the governmental powers of a political group over the social activity of component groups that has once been given an independent organization, especially when such activity is in process of expansion. During the centuries in which the craft gilds flourished England was enjoying a rapid economic growth. Earlier organized in merchant gilds, the differentiation of the older trading classes into new classes of artisans made it no easier for the towns to regulate the economic relations of townsmen than it had been before.

The division of town population on an economic basis into groups as craft gilds provided a convenient means for enforcing police measures not relating to trade or

industry. Thus, in 1282, to provisions for "the safe-keeping of the city of London," the ringing of curfew, inquiry as to suspected persons, inquisition of inns, closing of ale and wine shops, and night-watching the town and river, was added a provision—"As to the trades:—that every trade shall present the names of all persons in that trade, and of all who have been serving therein, where they dwell, and in what ward."¹ In 1370, when an attack on the city of London was apprehended, the mayor, aldermen and commonalty decided to keep forty men-at-arms and sixty archers between the tower of London and Billingsgate,

"which watch the men of the trades underwritten agreed to keep in succession each night . . . as follows:—Tuesday, Drapers and Tailors; Wednesday, Mercers and Apothecaries; Thursday, Fishmongers and Butchers; Friday, Pelterers and Vintners; Saturday, Goldsmiths and Sadlers; Sunday, Ironmongers, Armourers and Cutlers; Monday, Tawyers, Spurriers, Bowyers and Girdlers."²

In 1422, Parliament had enacted that all the weirs or "rydells" in the Thames between Staines and Gravesend, and Queensborough should be destroyed; accordingly the mayor and common council of the city of London ordained that two men from each of twenty-six crafts should accompany the mayor to execute the statute.³

The relations of the towns and crafts as organic bodies having been considered, it may be well to review the changes that took place from the standpoint of the individual townsman and his relation to town and gild. The earliest craftsmen had been aliens and not townsmen, neither enjoying the advantages nor bearing the burdens of burghesship. In the twelfth century and in the early

¹ *Memorials of London*, p. 21.

² *Ibid.*, pp. 344, 345.

³ Herbert, *History of the Twelve Great Livery Companies of London* vol. i., pp. 56, 57.

part of the following century they appear to have been a subject class. They could not become burgesses without forswearing their craft. A townsman could not be accused by a craftsman; nor could he be convicted on his testimony.¹ The historical sources do not reveal the steps by which the progress was made, but from such a status of servility he had risen to the level of full burghership by the latter part of the thirteenth century. It may perhaps be assumed in accounting for the rise of the artisans in importance in the towns (*a*) that they were increasing in number, (*b*) that many who had been serfs of the feudal lords became free and (*c*) that they increased in prosperity and consequently in wealth. The first step was, then, that burghership was denied the craftsmen; the next, that he was permitted to be both burgher and craftsman; the third step, that he might not be a craftsman without being a burgher, soon followed. Finally freedom of the town was conditioned on freedom of a gild.² The gild became the medium through which

¹ See the ordinances of the fullers and weavers at (*a*) Beverly and (*b*) Oxford and of the weavers at (*c*) Winchester and (*d*) Marlborough. (*a*) (*c*) In Beverly and Winchester the craftsmen could not follow their craft outside the city: if they wished to leave their mystery, they had to appeal to the municipal corporation to be received into the franchise and dispose of their tools. (*b*) In Oxford, the consent of the "good men" of the city was necessary to the following of the crafts; the widow of a craftsman had to leave the craft on her marriage to a second husband not of the craft. (*d*) In Marlborough the craftsmen could work only for the good men of the city; if they wished to acquire the franchise, two probationary years had to be passed and in the third the craft had to be forsworn; they might not engage in trade without disposing of their tools. In all four places the craftsmen were wanting in capacity to accuse or bear witness against freemen.—*Liber Custumarum*, pp. 130, 131.

² The double relation appears in an article of the Cordwainers or Taylors (1375) "that no one of said trade shall keep house within the franchise, if he be not free of the said city, and one knowing his trade: and that no one shall be admitted to the freedom without the presence of the wardens of the said trade, bearing witness to his standing."—*Memorials of London*, p. 391. See an ordinance of the Barbers, of the same year, of the same import,

burgessship was attained and exercised. Such a relationship between gild membership and participation in town life could not be long sustained without finding expression in the town constitution. Accordingly, in the governing bodies of many towns the craft gilds were given representation.¹ In some towns the domination of the gilds was carried so far that the town government was constitutionally nothing more than a federation of gilds. Such relations also had their effect on the gilds themselves. Instead of being organizations of tradesmen and craftsmen in the town, they tended to become merely

ibid., pp. 393, 394. Likewise it was provided that no one should "keep shop of the . . . craft [of Scriveners] in the city [of London] or in the suburbs thereof if he be not free of the city, made free in the same craft, and that, by men of the craft."—*Ibid.*, p. 372. More formally it was required by an ordinance of the Braelers (Brace-makers) of London that a foreigner should be brought by the wardens before the mayor and aldermen and in their presence examined by the former "as to whether he is proper and skilled in such trade, for the common profit; and whether he is of good standing for dwelling in the said city."—*Ibid.*, pp. 277-279. The ordinances of the Glovers plainly contemplated the use of the craft without admission to its freedom. "No foreigner in this trade shall keep shop, or shall follow this trade, or sell or buy, if he be not a freeman of the city, without the assent of the wardens of the same trade, or the greater part thereof."—*Ibid.*, pp. 245-247. By the articles of the Spurriers, "no alien of another country or foreigner of this country, shall follow or use the said trade, unless he is enfranchised before the Mayor, Aldermen and Chamberlain; and that, by witness and surety of the good folks of the said trade, who will undertake for him as to his loyalty and his good behavior."—*Ibid.*, pp. 226-228. The ordinances of the Lorimers required strangers to enter into frankpledge.—*Liber Custumarum*, p. 79. Even as late as the seventeenth century there was a custom in Chester "that no man can use or exercise any trade unles—besides his freedome of the Cittie—he be alsoe admitted, sworne, and made free of the same Company whereof he desires to trade."—Gross, *The Gild Merchant*, vol. i., p. 118, note (2), quoting from Harley MS. 2054, fol. 71.

¹ According to its charter of 1602, the Council of Durham was to consist of a mayor, twelve aldermen (serving for life) and the "twenty-four," the latter consisting of two members of each of twelve crafts, elected annually by the mayor and board of aldermen.—Gross, *The Gild Merchant*, vol. i., p. iii., note (2).

sections of the town population, the pivot around which their social life revolved being participation in town life and not engagement in trade or craft. Accordingly, the combination of gilds became frequent, when the centripetal force of burghership became stronger and the centrifugal force of economic interests became weaker.

In considering one other feature of the relations of the craft gilds to the organization of the wider society in which they flourished, it is necessary to anticipate somewhat a movement that has already been referred to and will be more fully described in a later chapter.¹ The all-important fact of the history of England in the fifteenth and sixteenth centuries was the development and attainment of nationality under the Tudors. The crafts were not affected as much directly by that great fact, as indirectly through its influence on the towns. By the middle of the sixteenth century the towns of England had generally become close corporations having only slight relation to the actual work of town government, denuded of most of the powers necessary to do such work, and supplanted in doing it by agencies more directly subordinate to the national government. It hardly need be suggested that under the influence of the movement there was a strong tendency towards the national incorporation of gilds (now more usually called companies or fellowships), to the widening of the geographical area of their activity.²

¹ The chapter on "National England," in vol. ii., pp. 62-65.

² Two early examples of the widening of the area of gild activity are evidenced by the two charters granted by Edward I. in 1327 to the Girdlers and the Pellipers (or Skinners) of London. By the first the material and workmanship of girdles were prescribed and extended to all the cities and boroughs of England, in each of which the regulations were to be enforced by the men of the local craft and by the local mayors or other head officers; the searchers of the London gild, however, were given power to search for false goods in other places.—*Memorials of London*, pp. 154-156. Certain ordinances made by the Pellipers were accepted and approved by the King and provisions made by them for the regulation of prices were to be in force not only in London but at fairs in all parts of the Kingdom.—*Ibid.*, pp. 153, 154.

and to the use of them to a limited extent as organs of the state. *E. g.*, largely because they were organized groups, the state used them for the important purposes of taxation, mostly in the form of forced loans. Guilds had previously been recognized by the king, particularly in the twelfth and thirteenth centuries. But the attitude of the crown towards the earliest guilds, those of which there is bare mention in the pipe rolls of Henry I. and his successors, had been largely permissive, somewhat similar to the attitude towards the bodies of Jews in several cities. As soon as the growth of towns had become an influential movement, the guilds were viewed by the crown as subject to them and in general continued to be so viewed as long as the towns retained their vigor. Some guild corporations had been created by royal charter as early as the century of the three Edwards, but the removal of guilds from the control of the towns implied in it had sometimes resulted in serious conflicts of interests, and had been followed by a pruning of guild powers as in the entertaining case of Exeter. The craft guilds, instead of presenting their ordinances for approval to mayors and aldermen, now had to submit them to the judges of national courts.¹ In many cases the ordinances of the

¹ See Statutes, vol. ii., p. 90; 19 Henry VII., c. 7 (1503), "For Making of Statutes by Bodies Incorporate": "No masters, wardens and fellowships of crafts or mysteries, nor any of them, nor any rulers of guilds or fraternities [shall] take upon them to make any acts or ordinances or to execute any acts or ordinances by them heretofore made, in disheritance or diminution of the prerogative of the King, nor of other, nor against the common profit of the people, but that the same acts or ordinances be examined and approved by the Chancellor, Treasurer of England, or Chief Justices of either Benches, or three of them, or before both the justices of assize in their circuit or progress in the shire where such acts or ordinances be made; . . . none of the same bodies corporate [shall] take upon them to make any acts or ordinances to restrain any person or persons to sue to the King's highness, or to any of his courts, for due remedy to be had in their causes, or put or execute any penalty or punishment upon any of them for any such suit to be made." The statute was in confirmation of an earlier one of 15 Henry

gilds were given effect throughout the nation in relation to matters that had hitherto been regarded as of local concern. On the other hand, matters of national importance were given over to the control of incorporated companies or supplemented by their activity.

(c) What was the status of the early artisan in the merchant gild is not known, though it is a justifiable conjecture that he might have been a member of it and a sharer of its privileges, especially if he combined with his craft the work of selling what he produced and did not confine himself to piece-work or servants' labor for his fellow-townsmen, and if he also accumulated sufficient wealth to have influence in the community. It is certain that in the twelfth century he was required to forswear his craft to obtain admission to the gild merchant. The organization of the craftsmen in gilds, even if favored by the town authorities for police purposes, must have united with the differentiation of the general merchant class into distinct classes more nearly on a level with the craftsmen to elevate their status in the town. The disintegration of the gild merchant with the increasing prosperity of the class of artisans must have secured for them the more independent social life that they enjoyed from the end of the thirteenth century. The difficulty of accounting for the changed condition of the artisans has led some writers to attribute it to more or less sanguinary conflicts between the craft gilds and merchant gilds in which the former were able to throw off the oppressive yoke of the latter; though the theory is discredited by the absence of historical evidence in support of it, the same objection must be urged to other theories that have been advanced in the same connection. It is merely suggested here that the merchant gild may have dissolved without serious conflict of interests into the several classes in which the

VI., requiring that ordinances be submitted to justices of the peace or the chief governors of cities and be entered by them of record.

merchants were afterwards organized, while the classes of artisans may have arisen in the social scale through the increasing importance of their economic activity and their closer relations with the new classes of merchants. At all events there is no evidence of organic relations between the merchant guilds and the craft guilds; the former gradually disappeared and the latter gradually took their place, except to the extent that it was taken by the towns under the domination of influential merchants; in addition to the narrower field covered by the old merchant guilds, the craft guilds also afforded a social structure for the newly-developed manufacturing activity of the artisans, the older bodies having had to do almost entirely with extracted products, not with transformed products.

Some differences between the merchant gild and craft gild may be conveniently noticed at this point. The former received its powers from the Crown, not directly, to be sure, but through the medium of the community in which it existed; peculiarly enough, it was not dealt with directly by the Crown, being viewed rather as the whole community in organization for particular purposes; though in actual operation it was quite otherwise. The craft gild, however, was uniformly viewed as an organization subject to the town and as getting its powers from it and not from the Crown¹ until the decay of town governments and their replacement to a large extent by national

¹ "It is ordained [in the first year of Edward III.] that all the mysteries of the City of London shall be lawfully regulated and governed, each according to its nature in due manner, that so no knavery, false workmanship, or deceit, shall be found in any manner in the said mysteries; for the honor of the good folks of the said mysteries, and for the common profit of the people. And in each mystery there shall be chosen and sworn four or six, or more or less, according as the mystery shall need; which persons so chosen and sworn, shall have full power from the mayor well and lawfully to do and to perform the same. And if any person of the said mysteries shall be rebellious, contradictory, or fractious, that so such persons may not duly perform their duties, and shall thereof be attainted, he shall [be imprisoned and fined]."—*Liber Albus*, pp. 424, 425.

agencies. The difference was doubtless due to the fact that the towns had secured independence and strength by the time the craft gilds were in a flourishing stage. While the gild merchant had its origin in the grant of the power to have it in the charter of the town, there is a quite uniform absence of mention of craft gilds in town charters. It seems never to have been necessary for the town to obtain from the Crown the power to bestow upon its component groups the social structure necessary to bring the pursuits of their interests into harmony with town life in general. To put the idea in another form, there was a general relation of equality in the merchant gild, of subordination in the craft gild, sustained to the town. The extra-territorial jurisdiction of the merchant gild, its power to act beyond the limits of the town in which it existed and to extend its privileges to non-residents, does not appear to have been possessed by the craft gild,¹ until they merged in the later national companies; that was one of the powers that went to the town in the distribution of the functions of the gild merchant; if a craftsman had rights to be protected away from his own town, they were protected through his citizenship in the town, not through his membership in the craft gild.

In the early years of the gild system, when industrial processes were comparatively simple, and few classes intervened between the producer of raw material and the consumer of the finished product, it was possible for gilds to be almost mutually exclusive, but with the economic development of the fourteenth and fifteenth centuries contact of gilds with one another became closer and resulted in the formation of a variety of relations, largely

¹ "No foreigner [shall] sell his wares . . . by retail, any more than other foreigners do in other trades in the city. . . . Butchers must dwell within the city, and hold the franchise equally with the other citizens, or else wholly do the same as foreigners do."—Ordinances of the Butchers (1331), *Memorials of London*, pp. 179, 180.

according to the relations of the economic activities organized within them. Sometimes two bodies of craftsmen, recognized as having distinct and perhaps conflicting interests, were united under one governing body composed of representatives selected by each craft. Quite frequently the ordinances relating to two conflicting crafts were combined in one code,¹ even if separately enforced.² Sometimes the gild of one craft was given control of the men of another craft with powers of search and presentation.³ Sometimes a craft was divided into

¹ Thus, in the 28th year of Edward I. the burillers of London made complaint that the weavers had substituted new statutes for old ones. Thereupon a body of new ordinances was drawn up by four aldermen, six burillers and seven weavers, to be enforced by four wardens, and to regulate not only the relations of weavers and burillers to each other but also those to the outside world.—*Liber Custumarum*, pp. 122-124. Two years earlier two successive royal writs had been issued for the investigation of the practice of sending cloth outside of London to be fulled. On the confession of the practice by the fullers of London, the "textores, burellarie, tinctoris et cissores" were called together "ad ordinandum et providendum dictum officium fullorum, qualiter in posterum se debent habere et gerere, ad emendationem dicti officii fullorum," and a code of rules composed for the control of all the allied crafts.—*Ibid.*, pp. 127-129. There was a similar disagreement between the joiners and saddlers of London and the same method of adjusting it was resorted to.—*Ibid.*, p. 80.

The two hallmotes held each year by the fishmongers were attended by "all the fishmongers who belong to the hallmote of the one fishmongery and the other"—the dealers in salt-fish and stock-fish as well as those in fresh-fish—but their statutes were enforced by fifteen wardens of the whole trade.—Statutes of Fishmongers, *Liber Albus*, pp. 323-334.

² The curriers and pelterers united in a statute or ordinance regulating fees, prices, etc., but they were to be enforced by one of the former and three of the latter.—*Liber Custumarum*, p. 94.

³ Some of the peculiarities of the relations of trades under the "gild system" come into view in the dispute of the cordwainers and cobblers in London in 1395. Complaint had been made to Richard II. by the alien "cobblers" dwelling in London "that they could not gain their living as they had gained it theretofore, by reason of their disturbance by the wardens of the trade of 'cordwainers.'" Thereupon the mayor, upon the order of the King that "the cobblers should gain their living as they had done from of old, and according as the custom" of London demanded, held an inquisition by twenty-four sworn men, twelve of each trade, and charged them "loyally

separate crafts, as when the development of particular kinds of work in it had created wide differences between its members.¹ Especially was such a division likely where the dealers in goods were combined with the producers of them in the same craft. As some trades (and especially the woollen trade) became more highly developed, the several processes between the producer and consumer were represented by separate crafts. Even when an actual division did not take place, distinct interests within the craft were early recognized, as in the ordinance of the braziers providing that at least one warden should be a worker in the trade while the others should be chapmen.² Some gilds became so much more important and

to present and declare that which was due, and would belong in right and reason to either side." The outcome of the inquisition was an agreement by the two trades: "No person who meddles with old shoes, shall meddle with new shoes to sell; and . . . every manner of work that may be made of new leather belongs to the new workers [cordwainers] without their meddling with any old work to sell. And in the same manner, the old workers [cobblers] shall not work upon anything but old leather for sale, on pain of forfeiting such work; except in mending old boots and shoes, that is to say, in 'quereling' before and behind, clouting and pecyng, ryvetting and lynyn; in doing the which, they may take new leather, or old, whichever shall be best for the common profit. And also,—that all persons following the said trade, in new work and in old, as well masters as serving men, shall be under the rule and governance of the wardens of the said trade of 'cordwainers' in overseeing and searching whether they keep the ordinances and do their work, on both sides, well and lawfully, for the common profit."—See indenture of agreement between the cordwainers and the cobblers, *Memorials of London*, pp. 339-349. For additional rules see pp. 571-574.

¹ Sometimes a degree of separation was due to other than purely economic causes. In 1370, the Flemish weavers and the weavers of Brabant were ordered to hold distinct meetings in separate churchyards, on account of the fights, brawls and tumults that had been incidental to common meetings; later it was held that the degree of separation was not such as to prevent the serving men of the trade from serving indifferently the masters of either one or the other of the two bodies.—*Memorials of London*, pp. 345, 346.

² Ordinances of the Braziers (1406), *Memorials of London*, pp. 624-627. A step in advance of the relations of the classes in the craft of braziers is

influential than others in their community that they were distinguished in classes, as in the well-known division of the London companies into "greater" and "lesser" companies.

The most suggestive feature of the relations that gradually came to exist between the several crafts is that the artisan crafts were usually subordinated to the trading crafts. Even in a craft in which were combined both trading and working classes, there was a plain tendency to make it the sole organization of the former by crowding out the latter or leaving them to become bachelors' or journeymen's companies.

From 1300 to 1450 the craft guilds were, on the whole, efficient organizations of trade and industry. So long as the social unit was local, so long as each town community was nearly self-sufficient and both demand and supply had reference to the population of its limited area, while town society was largely democratic, the influence of aggregated capital small, and industries simple and not divided into several processes, it was possible for the guild organization to endure. With increased communication between English towns and the growth of a foreign commerce the guild barriers were broken down. Both within and without, the craft guild was losing its control of economic activity. The membership of the guild had less and less reference to the trade or industry whose name it bore. Moreover the guild exercised a

exhibited in the relations of the tawyers and pelterers. "These are the Ordinances provided and made [in 1365] by the serving-men called 'Tawyers' in the city [of London], as to how they shall serve the Pelterers, and how much they shall take for their labor"; that they should work for no one but pelterers, freemen of London; that their work should be judged "by award and discretion of the rules of the trade of Pelterers"; that they should not make old "budge" into new leather (by stripping off the fur); that they should not act as brokers between dealer and dealer, etc.—*Memoirs of London*, pp. 330, 331. In the latter case one guild was plainly subject to another.

diminishing control over trade and industry. After the middle of the sixteenth century, the gild or company was so plainly a body having merely a profitable control over certain fields of industry instead of an organization for the control by the tradesmen or craftsmen of their own conditions that Elizabeth and James I. could see nothing objectionable in investing private individuals with similar powers in the "monopolies" created by them. The governing body of the craft had shrunk into a close corporation virtually outside of the craft itself and simply deriving revenues from it in the form of fees with little beyond a nominal control of it; most of the public functions of the body had vanished and in their place was a body of rights private in their nature. So clearly had the incorporated company slight influence over economic activity and so clearly had it become the channel through which general participation in the town life was reached that one might in London be permitted to engage in any trade or industry by obtaining the freedom of any company and through it the freedom of the city. As far as trade and industry alone were concerned the gilds, with few exceptions, ceased, after the sixteenth century, to promote them, if they did not even restrain them.

V—The London Livery Companies

The livery companies of London have been mentioned generally as the developed forms of the earlier gilds but deserve more particular notice because they represent what has survived from the gild system since the middle of the sixteenth century. They have been regarded by some writers as a distinct class of organizations, but may more properly be regarded merely as gilds modified by new conditions. In some of them there has been no break in corporate existence from the thirteenth century to the present time; such of them as were created in the

VOL. I.—14.

seventeenth century were made to conform with the companies then in existence and can hardly be considered evidence of a purpose, either on the part of the crown or on their own part, to institute a new class of corporations.

They were called "livery" companies because they had secured from the city of London permission to wear a livery or distinguishing dress, though by the sixteenth century its use had come to be restricted to a definite and distinct class of their numbers. They differed from the earlier guilds or crafts, which had been normally in direct subjection to the municipalities, in their having obtained recognition by charter from the crown, though perhaps not as technical corporations. The fishmongers had received royal sanction of their rights and duties as early as the reign of Edward I.; eight of the companies appear to have received charters from Edward III.¹ When they received their first charters they were not different from the other trade and craft guilds of the period. In each succeeding reign they secured confirmation of their former charters by "inspeximus" charters of the new sovereign until the reign of James I., when most of them obtained new charters and fourteen new companies were created.² Before the end of the fourteenth century the power of electing the municipal officers of the city of London had been assumed by them; moreover, they participated in the government of the city through their predominant representation in the common council, the aldermen being representatives of the wards of the city. The mayor of the city, who had to be taken

¹ See Table of Charters in Herbert's *History of the Twelve Great Livery Companies of London*, vol. i., p. 224.

² The following were the new companies incorporated by James I.: Curriers, plumbers, founders, fruiterers, scriveners, brown-bakers, wool-mongers, turners, apothecaries, silk-throwers, felt-makers, shipwrights, bowyers and tobacco-pipe-makers.

from one of the great livery companies,¹ was sometimes significantly described by virtue of his office "master of all the companies" or the "warden of all the companies." Twelve² of the companies, through their greater wealth and importance, and through their larger representation in the government of the city, had come to be distinguished as the "great" livery companies,³ the others being known as the "lesser" or "minor" livery companies. Among the former, moreover, an order of precedence had been established,⁴ which was of later importance almost solely in regulating their participation in civic pageants and "ridings." The chief characteristics that distinguished the livery companies of London from the older gilds and crafts at the beginning of the reign of Elizabeth were, then, (a) their possession of select bodies known as the "livery" or "clothing," (b) their incorporation or equivalent sanction by the crown, (c) their control of the government of the city and (d) their division

¹ When Sir John Frederick was elected mayor in 1661, he had to qualify himself for the office by securing admission to the court of the Grocers' Company; he had formerly been a member of the Barber Chirurgeons Company.

² At the end of the reign of Edward III. *thirteen* of the companies seem to have been predominant over the others.—Herbert, *History of the Twelve Great Livery Companies of London*, vol. i., pp. 33-35.

³ The chief privileges of the great livery companies were the following: (1) The wardens of them alone might attend the lord mayor as chief butler at coronations; (2) they alone (except the armorers) might enroll the sovereign as a member and entertain foreign princes and ambassadors; (3) they were accorded precedence in civic pageants; (4) they alone contributed to repair the city walls; (5) they were most heavily assessed in all levies for the state or city; (6) freedom of them was a necessary qualification for the office of president of the Irish Society.—Herbert, *History of the Twelve Great Livery Companies of London*, p. 37.

⁴ The process of selection or differentiation into great and lesser companies had begun before the end of the fourteenth century. The great livery companies, in their order of precedence, were the following: mercers, grocers, drapers, fishmongers, goldsmiths, skinnners, merchant taylors, haberdashers, salters, ironmongers, vintners and clothworkers.

into "great" and "lesser" companies with an order of precedence in the former.

The Reformation exerted its influence on the companies as on most other social bodies, by lessening somewhat the bonds of association. They had accumulated considerable property from which the income, wholly or in part, was expended on masses, obits and other religious ceremonies; such property, to the extent to which it was devoted to "superstitious uses," was assumed by the crown. They were permitted to redeem the property, however, by paying to the crown the amounts formerly devoted to superstitious uses capitalized at five per cent.¹ The amounts paid in redemption were raised by loans and subscriptions of members. One effect of the change was to relieve the companies of duties that had been especially appropriate for them. They became, to a certain extent, investors in property for the sake of its income instead of administrators of funds devoted to the welfare of their members' souls. Aside from the economic effects, much of the influence of Catholicism as a binding social force had been lost. Under the changed conditions, religious worship could not be so essentially a part of their common life. Yet after the Reformation, each of most of the companies attended a particular church, a part of which was reserved for their especial use; but sermons did not take the place that masses had formerly filled.

Within the companies the centre of corporate power was in the court of assistants, a body of from ten to thirty-five members, serving for life and filling their vacancies by coöptation; they "called" freemen to the livery, elected all the company's officers and had the direction of all its affairs. The executive officers were from one to six wardens; in some of the companies the

¹ The amounts were resolved into rent charges payable to the crown and then redeemed at twenty years' purchase.

chief executive was the prime warden, in others, a master, whether or not regarded as one of the wardens. They were elected annually from among the liverymen¹ by the court of assistants and became assistants at once, *ex officio*, or after having "passed the master's or prime warden's chair." The livery was also a body limited in number, though varying in size from fifty (in the great companies)² to four hundred members, called from the freemen by the court of assistants, and including the masters, wardens and assistants.³ By the end of the sixteenth century the color of the livery worn by each company became settled, though formerly it had been changeable, and the style became the same in all the companies—an indication that the relations between the separate companies and between them in the aggregate and the rest of society had crystallized. A peculiar development, possibly the result of the growth of the restricted livery, was the exclusion of women from the companies, except so far as they enjoyed mere freedom of them; it may have been due to some extent to the partial elimination of the religious element from the companies by the Reformation; at all events, there is almost no mention of women in their records after the sixteenth century; they certainly were not called to the livery. The oligarchical constitution outlined had become a fact by the beginning of the reign of Elizabeth, but it was not yet recognized in the charters of the companies; even during her reign only one new charter was granted to a

¹ Perhaps a survival of the earlier more democratic constitution appeared in the announcement, at the annual "election dinner" of the livery, of the choice of officers already made by the court of assistants at a "private election" or "secret election."

² In some of the lesser companies the livery numbered no more than ten members.

³ The Ironmongers' Company and Joiners' Company were exceptional in the respect that their liveries and courts of assistants were identical; in other words, the whole livery was the governing body.

company, the older charters of the other companies being simply confirmed by "inspeximus" charters. In the reign of James I., however, the new charters granted, whether to the old companies,¹ or to the fifteen newly created companies, distinctly recognized and sanctioned the developed constitution.

It is only in a limited sense that the freemen may be said to have been a part of their companies. The freedom might be acquired in four ways: (1) By apprenticeship or servitude, (2) by patrimony or birth, (3) by purchase or "redemption" and (4) by conference *honoris causa*. (1) A person became qualified for the freedom by an apprenticeship of seven years to a freeman; frequently such apprenticeship was merely colorable, a matter of form, without reference to the trade or craft of either the company, master or apprentice; frequent enactment of ordinances that it should be real and not merely colorable seemed to be unavailing. (2) All legitimate children, both male and female, born to freemen after the freedom had been acquired, were eligible to the freedom by virtue of such birth.² (3) The freedom might be conferred in return for the payment of a sum of money, in which case it was technically said to be acquired by redemption. (4) The freedom was frequently conferred as an honor on distinguished persons. Henry VII. and Prince Henry (son of James I.) thus became merchant taylors; James I., a clothworker; and Charles II., James II. and William III., grocers; Elizabeth was a "free sister" of the mercers. Persons were admitted to the freedom on proof of their qualifications by the masters and wardens; when conferred by redemption or

¹ Nine of the twelve great livery companies obtained new charters from James.

² It is impossible to ascertain definitely whether the freedom might be acquired by marriage to a "free brother" or "free sister" as in the early gilds, but the fact seems to be that it could not be so acquired.

honoris causa, it appears to have been by the court of assistants or livery. Membership in the companies was exclusive; a person might be a member of only one company, and he might transfer his membership from one to another. (1) Liverymen could be called only from freemen, and only from the wealthy and influential ones. In 1697 the court of aldermen of London enacted "that no person should be allowed to take upon himself the clothing of any of the twelve companies unless he have an estate of £1000; of the inferior companies, unless he have an estate of £500."¹ (2) Freedom of the city of London was consequent on membership in a livery company. (3) Freedom of a company enabled the freemen to follow the trade or craft controlled by the company; the rule was apparently broadened at times so much as to enable a person to follow any trade or craft if free of any company.² (4) Freemen were exclusively entitled to pensions, alms or other charitable aid from the large funds of the companies devoted to such purposes; similarly many educational advantages in institutions partly or wholly controlled by the companies were restricted to their freemen's families. If liverymen became bankrupt, or failed to meet the terms of agreements for the compromise of their debts, they lost the status of liverymen; if they applied for aid from the charitable funds, they similarly lost their status, to the extent, at least, of ceasing to be more than nominally liverymen; fees for admission to the livery being refunded to them.

The Reformation or the middle of the sixteenth century is usually assigned as the date at which the companies ceased to exercise control over trade and industry,

¹ Quoted in *Report of London Livery Companies Commission*, p. 21.

² "The freemen of the Vintners' Company who have become such by patrimony or apprenticeship, and the widows of such freemen, enjoy by custom the right of selling foreign wines without a license throughout England."—*London Livery Companies Commission, Report*, (1884), p. 19.

but the assignment is plainly too positive. Some of the companies exercise a degree of such control even at the present day. In 1884 the London Livery Companies Commission reported that the Fishmongers' Company still appointed and paid "fish meters" to examine fish offered for sale at Billingsgate Market and condemn such as they should find unsound, which were deodorized and removed at the company's expense; the company also prosecuted infractions of the provisions of the Fisheries Act¹ against the sale of undersized fish or of fish during "close time." The Society of Apothecaries were reported to exercise the power conferred by Parliament of examining candidates for licenses to practise as apothecaries, granting such licenses and of recovering penalties from persons practising without them. The Scriveners' Company exercised a similar control over candidates for the office of notary, by imposing examinations on them and preventing them from practising without having taken them. The Founders' Company had legal authority to stamp weights.² The Gunmakers' Company tested and marked guns, pistols and small arms, and prosecuted offenders against the act³ from which their authority was derived.⁴ Most of the new companies created during the seventeenth century were active until at least the middle of the eighteenth century. The power to enact ordinances was not fully used after 1550 by the older companies, but the right of search and approval was by no means unused. Three tendencies are noticeable in the control exercised over trade and industry: (1) The membership of the companies had continually less reference

¹ 40 and 41 Victoria, c. 42.

² Statutes 5 and 6 William IV., c. 63, and 41 and 42 Victoria, c. 49.

³ 31 and 32 Victoria, c. 113.

⁴ *London Livery Companies Commission, Report*, pp. 19, 20. "The Vintners' and Dyers' Companies are by ancient custom associated with the crown as joint protectors of the swans of the Thames."—*Ibid.*

to the trade or craft indicated by their names.¹ As early as 1415, the membership of the drapers had not been confined to tradesmen; in 1445, only one member of the skimmers was a skinner by trade; after 1502 the Merchant Taylors' Company was open by charter to all trades; in 1882, the liveries of the companies were found to be composed chiefly of professional men, wealthy business men and retired merchants.² The rights of control over trade and industry were a source of income to the companies; the rights were exercised by a group of persons without reference to their participation in the social activity controlled. From the standpoint of the crown the companies were not different from the "monopolies" created by Elizabeth and James; in fact, the powers exercised by the "monopolists" were the same, in most cases, as those formerly possessed by the companies and were viewed as merely transferred from them to the favored patentees of the crown. The power granted to the "monopolists" was not so much that of exclusive production or sale as of exclusive "searching and sealing." When an effort was made in 1580 to obtain from Elizabeth a monopoly of the gauging of beer, it was at once met by an objection from the Brewers' Company, who plainly regarded the scheme as a contemplated invasion of their chartered rights, though each party to the controversy insisted rather on considerations of expediency. Likewise the monopoly of "searching and sealing" leather was in derogation of the rights of the Leathersellers' Company. Indeed, the chief complaints against the granting of monopolies came from the livery companies, though their opposition was made more effectual by the excessive

¹ The Stationers' Company appears to be an exception to the general rule. This company "consists exclusively of craftsmen [and] carriers on in its corporate capacity the trade of a publisher, its principal publications being Almanacs."—*London Livery Companies Commission, Report* (1884), pp. 19, 20.

² *London Livery Companies Commission, Report*, p. 15.

rapacity of their opponents. (2) The subdivision of companies was not commensurate with the increase in the number of distinct trades or industries. Largely because the control of the companies was so distant and so lightly used, newly differentiated occupations were retained under the older organization or expressly subjected to it. Thus by a charter granted by William and Mary to the Grocers' Company, confectioners, druggists, tobaccoists, tobacco-cutters and sugar-refiners were retained or brought within its jurisdiction and subjected to its right of search; the name of the company, by its charter of 1607, was "the Freemen of the Misteries of Grocers and Apothecaries of the City of London"; in 1617, however, the apothecaries secured a separate charter from James I. on the ground "that the ignorance and rashness of presumptuous empirics and ignorant and inexperienced men may be restrained, whereupon many commodities, inconveniences and perils do daily arise to the rude and incredulous people."¹ Organ-makers continued to be governed by the Blacksmiths' Company, though the clockmakers subject to it obtained a separate charter. On the other hand, some divisions seem to have been hardly demanded by the conditions of industry, as the separation of the bowyers from the Fletchers. The division of the barber-chirurgeons into Barbers and Surgeons was apparently justified. After the middle of the sixteenth century, it is believed, no organized companies were united; the last union was probably that of the stock-fishmongers and salt-fishmongers in the Fishmongers' Company in 1536 by charter of Henry VIII. (3) The authority of the companies was extended beyond the city, in some cases over the whole of England. By the middle of the sixteenth century many foreign as well as native tradesmen and artisans had settled in the suburbs of London, outside of the jurisdiction of the companies;

¹ *London Livery Companies Commission, Report*, part iii., p. 1.

by statute in the reign of Henry VIII., their business and work were subjected to the inspection and approval of the London companies.¹ By the charters of the several companies granted in the reign of Elizabeth and succeeding reigns their right of regulation and search was expressly extended to include territory from two to seven miles beyond the limits of the city, as, for example, in the case of the Apothecaries' Company in 1617. The Merchant Taylors' silver yard was made a standard for the Bartholomew cloth-fair.² A similar extension of the powers of the Goldsmiths' Company had long antedated the Reformation. In the charter granted to it by Edward IV. it was provided "that in all trading cities and towns in England where gold-smiths reside, the same ordinance be observed as in London, and that one or two of every such city or town, for the rest of that trade, shall come to London to be ascertained of their touch of gold, and there to have a stamp of a punction with a leopard's head marked upon their work, as of ancient time it has been ordained."³ The same company had as one of its functions the "trial of the pyx," which it still performs.⁴ In 1884 the Stationers' Company still maintained, by virtue of the provisions of the Copyright Act of 1842, a register of all publications.⁵ Perhaps it is only another way of describing the geographical extension of the companies' powers to say that they were coming to exercise rather national than local powers.⁶

¹ Statutes 15 and 16 Henry VIII., c. 11.

² See also note on a privilege still exercised by freemen of the Vintners' Company, *supra*, p. 215, note.

³ Herbert, vol. ii., p. 289 (Charters of the Goldsmiths' Company).

⁴ According to Herbert, *op. cit.*, the "touch" and the "trial of the pyx" had been conferred on the Goldsmiths' Company before the twenty-eighth year of the reign of Edward I.

⁵ *London Livery Companies Commission, Report*, pp. 19, 20.

⁶ Probably the best exemplification of the use of a gild or the company developed from it for the exercise of national functions is found in the history of the "Master, Wardens and Assistants of the Gild, Fraternity or

The political relations of the livery companies to the government of metropolitan London have remained substantially unaltered to the present day. A "common hall" consisting of all liverymen free of the city proposes the names of two aldermen, one of whom is elected mayor by the court of aldermen. Until the passage of the Re-

Brotherhood of the most glorious and undivided Trinity, and of St. Clement in the Parish of Deptford Strand in the County of Kent." The company is assumed to have been a mediæval gild of pilots, mariners and seamen, but first appears positively from historical evidence in the early part of the sixteenth century, when it was incorporated by Henry VIII. At that time it was governed by a master, four wardens and eight assistants, and provided pilots for vessels, attended to the burial of deceased brethren and sisters, gave charitable aid to seamen and mariners in distress, relieved the widows and orphans of brethren and cared for the wives and children of such as were sick or in captivity. When Admiralty and Navy Boards were established by Henry VIII. in 1520, the company was placed in charge of the shipbuilding yard at Deptford. By act of Parliament in the eighth year of the reign of Elizabeth, they were given authority to erect new sea-marks and preserve old ones, and to grant licenses to mariners to row in the Thames; a fine of £100 might be imposed by them for the destruction of a sea-mark, one half for their own use and one half for the use of the crown; later in the same reign they acquired the entire rights of ballastage, beaconage and buoyage. In 1620 their duties are said to have been to lay buoys and erect beacons, to have charge of the naval stores and oversight of shipbuilding at Deptford, to present designs for ships and examine foreign ships offered for sale, to inspect provisions, cordage, ordnance and ammunition as well for private as for royal vessels, to give certificates to pilots and to masters recommended for royal vessels, and even to impress masters and seamen for the royal navy, to appoint some foreign consuls, as at Leghorn and Genoa, to serve as hydrographers of the navy, to participate in the adjudication of causes in the admiralty court in the capacity of assessors, to survey the number, armament and equipment of fleets, to grant licenses for the construction of wharves on the Thames below London Bridge, to aid in the suppression of piracy by contribution of money and otherwise, to investigate losses at sea, to redeem captives or secure their redemption and to exercise charity. Their income was in the form of fees, tolls and fines levied on the owners of vessels. In the reign of Elizabeth their exclusive control of pilotage had been interfered with by the grant of a monopoly of the pilotage of foreign vessels to William Hursh. Likewise private light-houses were licensed in the seventeenth century and continued in existence until the corporation of Trinity House was empowered by act of Parliament

form Act¹ members of Parliament had been elected by a common hall, but by that act the electorate was broadened by allowing ordinary electors to participate with the liverymen. The sheriffs, chamberlain, and other city officers are chosen by common halls. Constitutionally the metropolis remains little more than a federation of livery companies. Aside from their political relations to the government, the companies were used as organs of the state and city because they were organizations of large groups of citizens and because they represented, broadly speaking, the organized wealth of the city. In their corporate capacity they had become very wealthy through gifts and bequests of property by members and others for various purposes chiefly of a public nature, such as the maintenance of hospitals, almshouses and schools, and exhibitions and scholarships in colleges, for the payments of pensions and the distribution of charity in other forms; the income of the property was often in excess of the amounts expended in the execution of the trusts with which it was burdened and left a surplus for the enrichment of the companies. Another source of wealth was the fees paid for binding apprentices, admitting candidates to the freedom, advancing freemen to the livery, dues periodically paid by members and fines levied for the infraction of rules. Contributions had also at times been made by members which, if not repaid, became part

in 1836 to purchase them. By a charter of James I. in 1604 the membership of the company was divided into Younger Brethren, indefinite in number, and thirty-one Elder Brethren, of whom eighteen were mere Elder Brethren and the others constituted the master, four wardens and eight assistants; the master was elected annually by both the Elder and Younger Brethren; the assistants served for life and were elected by the Elder Brethren.—C. R. Barrett, *The Trinity House of Deptford Strand*, pp. 16, 37, 53, 54, III *et passim*. The charters and by-laws of the company, and acts of Parliament relating to it, are published in a separate volume, but the name of the compiler is not given; the copy used by the writer is in the library of Columbia University.

¹ 2 William IV., c. 45.

of the corporate property. Fees for "searching and sealing" goods, testing measures and similar public duties were considerable. Moreover, their members (liverymen) were nearly all wealthy and could be resorted to when the corporate funds were insufficient. When the king or city needed funds for any purpose, or desired the promotion of a public enterprise, resort was had, especially until the end of the seventeenth century, directly to the companies and indirectly through them to their members.¹ When lotteries were projected by the crown, the companies and their members were invited to subscribe for shares; they afterwards complained that there had been delay in the payment of prizes. During the period of the Civil War and Commonwealth, Charles as well as the Parliamentary party and Cromwell extorted loans from them. The usual procedure was to make a demand on the mayor of the city for the service; he in turn issued "precepts" to the companies for the loans, which were made out of corporate funds, money borrowed by the companies or contributions levied on their members (liverymen); during the Civil War some of the companies were reduced to the necessity of disposing of their plate to meet the exactions of the state. Only a small part of the loans were ever

¹ "From this period [1558] the extracting of money from the trading corporations became a regular source of supply to government, and was prosecuted during Elizabeth's and the succeeding reigns with a greediness and injustice that scarcely left those societies time to breathe."—Herbert, vol. i., p. 119. Undoubtedly the extent and effect of the use of the companies as a source of supply of public funds are exaggerated. The system, viewed broadly as a part of the machinery of taxation, was not entirely unjust. Among the assessments mentioned by Herbert are one in 1566 for "setting at worke of the worke-folkes in Brydwell," one in 1565 for erecting the Royal Exchange and one in 1569 for cleaning the city ditch. It hardly need be added that the system did not originate in 1558; assessments either of absolute contributions or of ostensible loans had been made earlier, though with less regularity and frequency. For example, in 1544, the twelve great livery companies had loaned to Henry VIII. £21,263.6s.8d., secured by a mortgage of crown lands, for use in the war with Scotland.

repaid. The halls of the companies also proved very convenient for barracks during the war and afterwards for the administrative offices of the departments of the Commonwealth government.

In times of war, the companies were required to furnish ships and quotas of soldiers. When England was threatened by the Armada, they furnished thirty-eight ships. For a long time they had also to maintain armories and powder magazines. In 1572 the creation and support by them of a standing force of three thousand soldiers appears to have been contemplated by the crown. In manning the ships provided by them for the use of the crown they were apparently permitted to impress the necessary number of men for seamen and marines. As in the exaction of loans, the crown required the city to provide the ships, soldiers and supplies; the mayor thereupon issued precepts to the several companies for their shares of the service.

An interesting function of the companies was the maintenance of a supply of corn for the use of the people in times of scarcity. It had been the custom of the city to maintain such a supply for the purpose of selling it to the people at a reasonable price when by reason of scarcity its market price had become excessive. Incidentally the habit had been contracted of applying to the companies for loans with which to lay in the supplies, and of answering their demands for repayment by suggestions that they take the corn itself. Finally the companies maintained the supplies themselves in the municipal storehouses at "the Bridge," where the city had kept them, and later more prudently in their own storehouses. The custom ceased on the destruction of the companies' storehouses in the great fire of 1666. Likewise, in the seventeenth century,

"for a constant supply of sea coal for the use of the poor in times of scarcity, and to defeat the combinations of coal dealers,

the several city companies . . . were ordered to purchase and lay up yearly . . . quantities of coals, which, in dear times, were to be vended in such manner and at such prices as the lord mayor and court of aldermen should by written precept direct, so that the coals should not be sold to loss.”¹

The companies were also the sources from which were derived the economic means of promoting voyages of discovery, the establishment of new trade with foreign peoples and the colonization of new lands. In some cases the companies or their members acted on their own initiative; in others they were more or less unwillingly induced to adventure capital through precepts issued by the mayor at the instance of the crown. But they not only contributed money in furtherance of such projects, —they also conferred upon them the form of organization in which their own affairs were conducted. In general the great companies engaged in foreign commerce and colonization during the sixteenth, seventeenth and eighteenth centuries were constituted on the model of the London Livery Company. The Merchant Adventurers appear to have been at first organized within the Mercers' Company; later they had a separate organization, but were subject to ordinances enacted by the Mercers and had to render a sort of tribute to them; finally they attained complete independence. Until 1526 the Merchant Adventurers and Mercers used the same books for recording their transactions. The Turkey or Levant Company appears to have been an offshoot of the Grocers' Company and used its halls for meetings until the great fire of 1666. The East India Company had as close connection with the Levant Company as is implied in the use of the books of the latter for the meetings held in organizing it, and was moreover closely related to the Grocers' Company through the partial identity of their

¹ Noorthouck, *History of London*, p. 222.

fields of activity and of their membership. Precepts do not appear certainly to have been called for in the organization of the purely commercial companies, but they were issued for setting out voyages of discovery; in the former, private interest could probably be relied on for a motive force, while in the latter the element of a definite prospect of gain was wanting. For a similar reason—because the public purpose was magnified and private interest was without a stimulus—the issuance of precepts for subscriptions was occasioned by projects of colonization. In the charter granted to the London Company in 1609 for the colonization of “South Virginia,”¹ the names of most of the important livery companies of London appear as “adventurers.” In response to the demand made in its precept, the Merchant Taylors’ Company subscribed £200, one half as its corporate subscription and one half as the subscription of individual members. When the lottery permitted by the charter of 1612² was set up, the companies were required (invited or requested by precept) to subscribe for shares, and the drawing was held in the hall of one of them. The most interesting colonization project in which they participated was that of the Irish Society. James I., in 1609, invited the city of London to plant and govern a colony on lands forfeited by rebels in the county of Ulster in Ireland—a project which he described as “likely to prove pleasing to Almighty God, honorable to the city, and profitable to the undertakers.” The mayor thereupon summoned a meeting of representatives of the twelve great livery companies (four from each company) to consider the proposal. As a result, the companies advanced for the execution of the project various sums which were afterwards increased to £5000 for each company or £60,000 for all. They also provided for the government of the colony by a governor, deputy governor and twenty-four

¹ *Infra*, pp. 161–162, vol. ii.
vol. i–15.

² *Supra*, p. 163, vol. ii.

assistants, the recorder and five of the aldermen of London to be members of the court, and all members to be "free of the city." The body, known as the "Irish Society," was incorporated by James in 1613 as the "Governor and Assistants of the new Plantation in Ulster, within the realm of Ireland." A new county was laid out for it on the site of the old city of Derrie and in its vicinity, which was appropriately named "Londonderry." Most of the land was divided in twelve equal parts among the several livery companies, but a part remained undivided under the administration of the Irish Society.¹

The companies were also, in a measure, made media for the publication and enforcement of laws and proclamations. In 1579, when a libellous book was published about a prospective marriage of Elizabeth to the Duke of Anjou, precepts were sent to all the wardens of livery companies directing them to warn their members not to possess or harbor but to suppress such literature. Sumptuary legislation, such as related to the kinds of caps and other clothing that should be worn by different social classes, was brought to the attention of the companies and its enforcement enjoined by precepts.

No small part of the companies' activity was expended in the presentation of pageants on land and river on public occasions, such as the return of the king or queen after an absence from the city or country. The "lord mayor's show," presented annually under the auspices of the company of which the mayor was a member, was a most elaborate and expensive function; it is said to have been most magnificent from the middle of the sixteenth to the end of the seventeenth century. When foreign ambassadors or other distinguished persons arrived in London, it was not unusual for the great livery companies to provide

¹ Hazlett, *The Livery Companies of the City of London*, pp. 28-30. Herbert, vol. i., pp. 220-224.

a fitting reception for them, sometimes including a street pageant. When the Russian ambassador was expected to arrive in the city in 1617, the companies were ordered by precept to provide a number of the members of each of them to accompany the mayor and aldermen to receive him at the quay. Likewise the funerals of the companies' members or of the king or prominent persons were ceremonies in which the companies participated with the usual elaborateness. Another phase of the ceremonial side of the companies' life was and still is the giving of banquets, both periodically and on special occasions,—apparently the most enduring feature of gild life for nearly a thousand years. Some of them were intended chiefly for their own members, such as the "election banquet," the survival of the early annual meeting of gildsmen for the election of their officers and the transaction of their other business; others were intended to add dignity to public occasions, such as the election and inauguration of a lord mayor; others still were given in honor of distinguished English or foreign statesmen or other persons.

During the reigns of Elizabeth and the Stuarts there was much interference by the court with the companies in appointments to offices and the disposition of property by lease and otherwise. It ought hardly to be regarded as a movement of importance for it was certainly prompted by little more than a sordid purpose to derive pecuniary and political advantages from the companies' management of their affairs. But the matter terminated in 1684 in the issuance of writs of *quo warranto* against the companies. The charter of London, or its body of privileges, had already been declared forfeited and the companies did not wait for adverse decisions; they subserviently surrendered their charters to Charles II. with petitions, in most cases, for a regrant of their privileges. When a committee of the Grocers'

Company, appointed for the purpose, waited on the King's secretary they were told that the King was not disposed to deprive them of their property or powers, but desired only "a regulation of the governing part, so as his majesty might for the future have in himself a moving power of any officer therein for mismanagement, in the same way and method that they themselves now used, and claimed to have by power derivable from the crown."¹ By the new charters granted by Charles II. it was provided that wardens' and clerks' names should first be presented to the King for his approval; if they should be approved, they should assume office, but if rejected, successive new elections should be held by the courts of assistants until the King's approval should be obtained. Moreover, any warden, clerk or assistant should be removable by order of the privy council, and none should be elected to the livery without the approval of the mayor and court of aldermen of London. Before James II. fled from England in 1688, he prepared by an order in council to restore the companies' charters to them. After the Revolution the companies were restored by statute to the status held by them before the writs of *quo warranto* were issued under Charles II.² New charters were granted to some of them by William and Mary.

After the beginning of the nineteenth century the wealth of the livery companies increased very greatly, chiefly by reason of the rapid rise in the value of the large amounts of city real estate owned by them. Their somewhat anomalous character and activity led to the appointment in 1880 of a royal commission of twelve members

"to inquire into the circumstances and dates of their foundation, and the objects for which they were founded, and how

¹ Herbert, *History of the Twelve Great Livery Companies of London*, vol. i., p. 214.

² Statute 2 William and Mary, Session I., c. 8, s. 14.

far those objects are now being carried into effect . . . to inquire into and ascertain the constitution and powers of [their] governing bodies . . . and the mode of admission of freemen, livery, and other members . . . to inquire into and ascertain the property of, or held in trust for or by [them], both real and personal, and where the same is situate, and of what it is composed, and the capital value of the several descriptions of such property, and [its] annual income . . . and the mode in which [it] is managed and the income is expended [and] to consider and report what measures [if any] are . . . expedient and necessary for improving or altering the constitution of such companies, or the appropriation or administration of the property or revenues thereof."

It was found that in 1880 the income from property held in trust had been about £200,000, and from corporate property between £550,000 and £600,000, a total of from £750,000 to £800,000; the property was estimated to be of the value of at least £15,000,000, while the indebtedness of the companies was about £180,000. The companies whose affairs were investigated were the twelve great livery companies and sixty lesser livery companies; it was found that since 1835 thirteen companies had become extinct; four unimportant companies were not included in the investigation because they were not technically "livery" companies. When their report was made in 1884, the commission were

"of opinion the state should intervene but only for the purposes of (1) preventing the alienation of the property of the companies of London, (2) securing the permanent application of a considerable portion of the corporate income thence arising to useful purposes, (3) declaring new trusts in cases in which a better application of the trust income of the companies has become desirable." ¹

¹ *Report of City of London Livery Companies Commission, Report of Commissions, Session of 1884, vol. xxxix.*

No changes have resulted directly from the investigation. Indirectly it has influenced the companies on their own initiative to devote a larger part of their corporate income to public purposes, such as the establishment and support of institutions for technical education.

The history of the livery companies of London is interesting evidence of the persistence of corporate structure aside from the activity that may have originally been exercised within it. In the thirteenth and fourteenth centuries they had been social organizations of tradesmen and artisans for the control of their economic life in substantial harmony with the gild system. When the gild system, speaking broadly, ceased to be an efficient organization of industrial society after the middle of the sixteenth century, the London livery companies shared with the rest of the system in the loss of their control over trade and industry. They continued to exist, however, for five general reasons: (1) London had never possessed the homogeneity that characterized most other English towns; it had always been rather a federation of units than a distinct unit, whether of geographical units that crystallized in wards, or of units of population organized in gilds. The conception of gild representation in the government of the city was on that account more easily realized. When once admitted to participate as units in the government of the city, the superior vigor of their corporate life made it readily possible for them to almost wholly absorb it. One reason for the persistence of their life is that they were largely identical with the city government and found in their exercise of political power a function capable of perpetuating them. (2) London, to both its advantage and disadvantage, was nearer to the royal government than any other city in England; its powers were greater, while its duties were also heavier. Its government, constructed by confedera-

tion of gilds, could not be so easily modified by the centralizing influences represented in the crown; at the same time, the growth of royal power demanded greater services of a national character; both tending to strengthen the gilds as organizations by increasing their autonomy and broadening their functions. They became organs of the expanding national government, as similar organizations in other cities could not. (3) They were the organizations of the great commercial wealth of London, irrespective of the occupations of its owners. In many cities the governing body itself had become the organization of the wealthy classes; in a few of them, a predominant gild or company had displaced it; in London, the companies served the purpose. Perhaps inseparable from the possession of great wealth was the social-fraternal ostentation of its owners through the social machinery of the companies, providing a strong corporate bond and enriching the companies through the benefactions of their members. (4) Before the establishment of the East India Company and other great foreign commercial companies and of the Bank of England at the end of the seventeenth century there was no organization of capital to which the national government could resort for the satisfaction of its financial needs; it had no "financial agent." The city of London, acting through the livery companies, supplied the want until more convenient institutions could be evolved from experience. It was a crude expedient, but its use for the purpose tended to perpetuate the corporate existence of the companies. (5) Finally the large accumulation of corporate wealth, whether held in trust or absolutely, as distinguished from the wealth of private members, strengthened the life of the companies. In fact, the administration of their trust estates and the expenditure of a part of the income from corporate estates on entertainments and benevolences have been the chief

functions of the companies since the middle of the last century.¹ The holding of property by a corporation is theoretically subsidiary to the accomplishment of some public purpose, but when the purpose has been lost to view, or has been accomplished, the accumulated property, especially if large in amount, tends to hold the corporation together, because it is so difficult to distribute the property equitably. The Livery Companies Commission were evidently perplexed by the problem what disposition should be made of the companies' property, if they should not be maintained as corporations. The London livery companies, to recapitulate, were maintained beyond the time of decay of their mediæval functions by (1) their intimate connection with the municipal government of the city, (2) their use as organs of the expanding central government, (3) their service in the expression of the power and ostentation of the exceptionally wealthy classes of London, (4) their use as organizations through which the financial needs of the nation and city might be supplied and (5) their accumulated corporate wealth.

VI

[It is impossible to designate exactly the point in history at which the associations included under the general name of the "gild system" attained the degree of development implied in the term "corporation."] Even as loosely as the term is commonly used, one would hesitate to apply it to the guilds of the thirteenth century, while the justice of applying it to the London livery companies of the eighteenth century is unquestionable. The mere use of the words "corporation," "body corporate" or "body politic" in historical documents is not a safe basis of judgment, and for reasons that will appear more fully in

¹ *London Livery Companies Commission Report* (1884), p. 19. The period there stated is the past two centuries, but that is certainly too long.

a later chapter,¹ the technical legal tests used for the past one hundred and fifty years would be quite useless. Possibly a somewhat careful examination of the associations discussed in this chapter, in the light of what has been said of the nature of corporations,² will be of service.

[All the gilds (even including the rudimentary organizations imposed on bodies of tradesmen and craftsmen for police purposes) were recognized by the state,—in other words, they were protected in the exercise of their powers, though to a varying extent, by the coercive force of politically organized society, whether wielded by king or municipality. But bare recognition is not enough; corporations are *creatures* of the state, the term implying that the state has a more than passive interest in them.] The Frith-gilds have already been considered from that point of view.³ The ecclesiastical and social-religious gilds may have been of benefit to society, may have aided humanity in its progress towards the indefinable goal of perfection which it is ever striving to attain, but they were not so viewed by the state, by society as it happened to be organized during the time when they flourished; its attitude towards them was merely permissive, tolerative. The same statement would be almost true of the earliest trade gilds, of the merchant gilds in the twelfth century and of the craft gilds in the century following. The passive attitude hardly became clearly one of activity before the reigns of Richard I. and John in the case of the merchant gilds and the century covered by the reigns of the three Edwards may be safely called the period during which a similar transition took place in the attitude towards the craft gilds. It is doubtful whether such a change of attitude towards the ecclesiastical and social-religious gilds ever took place; their chief importance in the development of corporations is that they provided an interior organization, a system of rela-

¹ *Infra*, pp. 210-211 of vol. ii.

² *Supra*, pp. 230-232.

³ *Supra*, p. 147.

tions between their members, that might be used and indeed was used as a social structure for other kinds of social life. The best evidence of the change of attitude towards the craft gilds lies in the fact that many trades not voluntarily organized in gilds were compulsorily organized by the municipalities on the model of the true gilds.

[To what extent were the gild relations voluntary or compulsory, and what degree of stability did they possess when once assumed? The ecclesiastical and social-religious gilds were clearly voluntary associations and there is no reason to doubt that members might retire from them at will. They were by no means the only media through which the soul's welfare in the future world might be assured or the fraternal-social impulses of men in this world afforded gratification. They occupied no exclusive field of social activity. In the trade gilds, the situation was different. The merchant gilds and the later craft gilds occupied exclusive fields of life. The early buyer and seller and the later tradesman or craftsman had to belong to a gild.] It must not be said that his membership in the gild was voluntary; he might exercise his will in determining whether he would buy, sell, trade or manufacture, but if once he should choose, his membership in the gild followed as a matter of compulsion. But there was a channel through which a voluntary element crept into the gilds. The membership in the gild conveyed the right to participate in certain lines of economic activity as well as to control them; if the former should be emphasized but a little, the sufferance of the gild would be of as great advantage as its franchise; and that was exactly what happened, if not always in form, at least quite universally in substance. The tradesman or artisan simply paid tribute to the gild for the permission to engage in a trade, or industry, while the gild virtually shrunk into a smaller body in the exercise of control over it. Then membership became truly

voluntary. In many gilds the distinction between persons who merely wanted to trade or manufacture and others who actually expected to attend gild feasts, occupy offices and be of one "clothing" or another was clearly and unequivocally made; the former were eventually excluded from the gild organization; the latter constituted the gild and membership in their number was not compulsory. The two sides of gild life had become separate; doing business and imposing the conditions under which it should be done had come to be distinct; the former was left to a social class substantially unorganized; the latter became the function of the gild. Membership in the gild was not voluntary until the shrinkage described had taken place. When once the obligations of membership in a trade gild had been assumed, they were not easily laid aside. One could belong to only one gild at a time, and once he had chosen his occupation and entered the appropriate gild, all the social usages of the time were in opposition to his making a change or even allowing his children to make it. Moreover, other crafts were not expected to admit readily a deserter from his own craft. Membership in a craft carried too much with it to permit it to be easily laid aside. One's residence, his status in society, his credit, his fraternal relations with his fellows, were dependent on his membership in his gild. Moreover, even if surrender of membership in a gild had been readily permissible, entering another gild in order to follow another occupation would have been necessary; the general obligation of gild membership was quite unavoidable. When what has been called the process of social shrinkage in the gild had taken place, it was only by consent of the narrower body that the burdens of membership might be laid aside. When the precepts of the Stuarts had become too frequent, liverymen of the London companies would have been glad to surrender their membership but could not do it. Membership in

trade gilds, then, may be said to have been characterized by a high degree of stability, and its assumption was hardly voluntary until the gilds had departed from their democratic basis and were becoming virtually organizations of the governing or directing element in trade and industry.

[More important, possibly, is the question of the internal status of the gilds: whether the centre from which their restricted social force was exerted, the source of their activity, was within or without them; whether in exerting their social force, either in the preliminary stage of determining to what end or in what manner it should be exerted or in the later stage of actually exerting it and transforming it into social effects, they were self-sufficient or in their weakness had to be supplemented by auxiliary social agents; and whether they possessed the power of maintaining their character as associations, groups of persons, without aid or interference from the outside in the replenishment of their membership.] The ecclesiastical and social-religious gilds were essentially autonomous; no preliminary act of Church or State was necessary to set their social force in motion or to keep it in motion except in so far as the statute of mortmain required the consent of the state to their holding the property that served to some extent as the economic basis of their activity; nor was the command or consent of external social agents prerequisite to their enactment or enforcement of ordinances; likewise they controlled their own membership, granting or denying admission to applicants as they pleased and expelling undesirable members. [As far as the qualities of autonomy, self-sufficiency, and self-renovation are concerned, the ecclesiastical and social-religious gilds were in plain possession of them.] But the powers of the trade gilds were so much more vital to society that they were unable to exercise them in so great independence of nation and town. [The developed mer-

chant gilds and craft gilds, however, with the exception of those described as compulsorily organized by the town, were fairly autonomous; they generally elected their own officers, though the first ones were usually appointed by the town government, and though all had to qualify themselves for their offices by taking an oath before the mayor; the initiation of any movement within the limits of their powers belonged to them and their gild life had an independent centre. But they were not fully self-sufficient; their ordinances were sometimes enacted for them by the town or nation; their assent, at least, was usually sought; even when they enacted their own ordinances, they had to submit them to superior social groups for approval. When their ordinances were to be enforced, they seldom had the power to enforce them in their own courts; and when they had such power they often had to submit to a review of the decisions of their own courts or officers by municipal or national authorities; more usually they had the bare power to present infractions of their ordinances before the higher authorities for their consideration. Yet though they appear as a matter of theory to have been very dependent on the municipal and national authorities in putting their powers into effect, they were nevertheless, in actual practice, subjected to very slight control from the outside. Through the inability of the town to enact technically proper ordinances, and through the influence of their own compactly organized members, the gilds were generally able to get such ordinances as they desired; and in the enforcement of them, gild loyalty could safely be relied on to give them weight without resorting to mayors and judges for punishment of their infractions. When their relations to industry became more remote and their importance to the actual economic activity of society decreased, they were allowed greater independence by the state. It is needless to add that their control over their

membership was nearly exclusive. Even in their early stages, when they were substantially organizations of all the persons engaged in a particular vocation, trade or industry, they were always allowed to determine whether applicants for admission were proper to be admitted; though the children of gildsmen had the privilege of entering the gilds on payment of lower fees than others, the gild had to pass on their admission; likewise the gilds had the power to protect their membership by expelling their members for infractions of ordinances; apprenticeship, as a channel through which members might be admitted, was under their close control. When the gilds had developed into companies, virtually organizations of the upper classes in trades and crafts, or of persons having no connection with them, membership was still more closely limited; even apprenticeship led only to the status of a shopkeeper or workman in the trade or craft, and not to membership in its organized governing body. In general, and especially in their later development, the trade gilds, exclusive of a class of them that were clearly imperfect and abortive, possessed the degree of autonomy, self-sufficiency, and self-renovation that is one of the attributes of corporations.)

(The feature of compulsory unity in gilds of all kinds was so conspicuous at all times that attention need hardly be called to it. But the unity of the gilds was in the early centuries rather political than personal.) Though the gild acted as a unit, it was mostly for the purpose of determining how each member should act in the sphere of social life within its limited field. The ecclesiastical gilds, standing midway between the monastic organizations and the later gilds, afforded, under ecclesiastical management, the means for the salvation of the souls of individuals; likewise the social-religious gilds, though not under the direct management of the Church, provided social machinery through which the brethren might be more fully as-

sured of welfare in the future life, and also regulated the social relations in the present life to one another, and, to some extent, to outsiders. In the trade gilds, moreover, the element of unity was largely in the possession of social machinery for the regulation of the personal activity of members. The individual was not lost sight of—he was rather held up to plainer view. The gilds were not so much active social agents themselves as they were political organizations within which the individual might more effectively act, in other words, they were political units. When in the course of their development the governmental part of the gilds became distinct from the social functions of their members, their unity assumed a different form and became more nearly real, as they became more nearly governing bodies, to the exclusion of persons subject to their regulations. While the relations of gildsmen to outside members of society rested on them individually (though acting under rules imposed by the whole gild) their interrelations were sustained largely through the medium of their governing body, for whose use a more or less elaborate accumulation of economic goods was necessary. The gilds maintained common-boxes to make effective their system of almsgiving, had candelabra and funeral palls for religious purposes and stage property for plays; many eventually owned common halls, almshouses, schools and hospitals. The interrelations of members may be said not to have been terminated by death. As in life members united in religious services for their souls' future welfare, so at death they aimed to carry beyond the grave the advantages of gild membership by bequeathing property in return for masses and prayers for the repose of their souls to be rendered through the same gild machinery. The gild as a group thus came to be the owner, in many cases, of considerable amounts of property, augmented by many fees paid for binding apprentices, admitting to

the freedom and the like; while concurrently the gild was virtually shrinking into its governing body, and its actual control over industry was gradually wasting away. The effect was a conception of the gild as a body actually doing *for society* instead of imposing regulations under which society could do for itself. When that conception had been attained, the way was clear for the modern corporation with its conception of *personal* unity in place of the older one of the *political* unity of the gild.

[What was said of the merchant gilds must with equal truth be said of the ecclesiastical, social-religious and craft gilds. Their vital principle was the private interest of their members. The universal element of religious service had for its purpose the betterment of the gildsman's status in the future life. The distribution of alms among members was certainly not prompted by a desire to benefit society in general; even the distribution of alms to non-members was intended to benefit rather the donor than the donee; it was a reflection of the self-abnegatory religion of the Middle Ages. The supervision of economic processes and the maintenance of a standard of skill and fair dealing were certainly for the protection rather of fellow-gildsmen than of the other members of society with whom they came in contact, though the state was amply justified in finding in them means of benefiting society in general. The private interest, however, was not manifested by each gildsman in his own commercial and industrial activity; it was manifested rather in his fellow-gildsmen's work; it was a social or political interest. The private interest of tailors, as far as the gild system was concerned, did not impel them to make and sell clothes; it impelled them rather to organize their group so that each tailor, in making and selling clothes, might do so under such regulations that he would not thereby do injury to his fellow-tailors.] The movement discussed in the preceding chapter, however,

wrought a change in the nature of the interest, though it still remained private interest. When the positive functions of gilds in making and enforcing rules of individual activity had virtually disappeared, leaving the older governing body of the gild separated from trade and industry but compactly united in the administration of a fund of gild property, the private interests of its members centred in the participation in the fruits of its accumulated wealth and social prestige.

Corporations, it has been suggested,¹ are not only organizations of a particular form, but also only those whose functions are (a) public and (b) appropriate for social activity. What is a public function depends, practically, on the state of public opinion at a given time. Though dependent to some extent on the nature of the activity itself, yet the question whether its performance is a public function is answered by the state in view of many considerations that it is not necessary to detail. The preservation of the peace was regarded as a public function in the ninth and tenth centuries, and if the state had not accomplished it through the Frith-gilds, it must of necessity have found some other means of accomplishing it. The maintenance of a social organization by means of which the religious sentiments of a people may find expression has often and perhaps well been regarded by the state as one of its functions. It was so regarded from the tenth to the sixteenth centuries, but the ecclesiastical and social-religious gilds were not considered as necessary for the purpose. The State and Church had an organization adequate for the purpose without them. Yet they were allowed to exist, for while they were not positively necessary, they did not detract strength from the regular religious organization. Whatever was the attitude of the state, in view of the existing organization of society on its religious side, the religious

¹ *Supra*, page 11.

work of the ecclesiastical and social-religious guilds was public in its nature, as affording a social medium through which the individual might approach perfection. Even in their social-fraternal aspects, the latter class of guilds were clearly performing public functions, even if the state, in their absence, would not have considered it a duty to provide other institutions to take their place. The regulation of trade and industry is conceded to be a public function, though it has not always been so readily conceded as now. In so far, then, as the merchant guilds and craft guilds regulated the economic activity of their members, they were performing a public function. The unit of organization was small, to be sure, but social progress was necessary to enable society to grow out of the gild into the town and out of the town into the nation. The degree to which the economic activity of society may best be regulated must always remain an open question, but that some regulation is necessary cannot be doubted. Whether the state shall regulate trade and industry directly or indirectly through more or less voluntary sub-groups of citizens is a question of expediency; under the system of trade guilds, the state adopted the latter method and relied upon the power of revision and prior approval to keep the self-interest of the guildsmen from overbalancing the interests of society in general. But the regulation of the economic activity of society was not the only public function that devolved on the guilds. The participation in town government, the presentation of plays and pageants on public occasions, the entertainment of notable citizens and foreigners and the maintenance of schools, almshouses and hospitals were public functions that they continued to perform even after they had virtually lost their effective control of trade and industry, though the effort involved in their performance was hardly commensurate with the private compensation of members incident to it.

[To what extent were the functions of the gilds appropriate for associate activity? To what extent did they demand the existence of bodies of persons instead of individuals? The stage of development in which the gilds were essentially organizations of groups of persons for their self-government in some field of activity presents a simple case. The term self-government implies group activity in the work of government, whatever the field covered and whatever the end aimed at, whether the preservation of the peace, the celebration of religious services, the maintenance of fraternal relations or the regulation of trade and industry. But when the element of self-government was modified, as in the ecclesiastical gilds or later trade gilds, or virtually eliminated, as in the still later trade companies,—*i. e.*, when the gild came to be merely the governing body of the group that previously had been entirely included in it,—the appropriateness of the work of regulation for associate activity is not so plain. Elizabeth and James, in granting patents of monopoly, were evidently of the opinion that such duties could properly be reposed in the hands of individuals.] As a general principle, the fact that a function is public in its nature lends a presumption that it may best be performed by associated persons; the volume (if the expression may be used) of the work is likely to be beyond the capacity of an individual; its possession of the public character makes it necessary that it be closely adjusted to its environment, that it be correlated with the activity of other social agents,—a work that may best be done by a deliberating body of persons; moreover, it is likely to have such need of continuity that the life of the individual must be extended into the possibly endless life of a group. The effective regulation of trade and industry, so far as it was accomplished at all after the gilds had ceased to be potent, was the work of Parliament; the creation of monopolies resulted in failure,—indeed, it was hardly

intended to provide an effective supervision of trade and industry, but only to provide a questionable source of revenue. But even if the vanished power of the control over the economic life of society had tended to destroy the character of the guilds and trade companies as associations, their other public functions tended to preserve it; the maintenance of the guild machinery was necessary for the administration of the accumulated property, the presentation of pageants, the participation in town life as numerical divisions of the people and the provision of public entertainment.

[It appears, then, to be an impossibility to designate a particular point of time in history at which the corporation appeared in the guild system; the whole course of development was uneven, as between different classes and sub-classes of guilds, and as between the several qualities that in combination characterize the ideal corporation.]

CHAPTER VII

EDUCATIONAL AND ELEEMOSYNARY CORPORATIONS

I—Origin of the Universities

ON the demise of the institutions of the Western Roman Empire, the preservation of the remnants of Greek and Roman learning and the feeble maintenance of education were left, with much else, as a heritage of the Church and especially of its bodies of monks. Un-Romanized Christianity and Roman learning found a common refuge; some of the monasteries, like that of Viviers, founded by Cassiodorus, appear to have been devoted rather to the ends of learning than to those of religion. Even the municipal schools that survived in Italy and in southern France, where Roman institutions had taken root most firmly north of the Alps, succumbed to the Frankish invasions and left to the monks such part of the field as they had not previously occupied. The Benedictine reorganization opportunely gave an impetus to monasticism at the beginning of the sixth century, even before the barbarian migrations had ceased; in the convents based on the Benedictine rule was the sole refuge of learning from the sixth to the ninth century, or until the reaction in the Church by which on one hand the regular life of the monasteries was introduced into cathedral chapters, and on the other, the monasteries were transformed into cathedrals. In both monastery and cathedral, however, education was long intended solely to qualify monks and canons for the performance of their

religious duties and not to raise the general level of learning in society. As the life of convent or chapter was lived as an end in itself, so learning, subordinated to that life, found no wider purpose. It was only at the beginning of the ninth century that the larger monasteries made a distinction between the *oblati* and outsiders in their schools; but by that time they had shrunk from bodies of laymen into an order of the priesthood; the differentiation in the body of scholars was parallel with the change in the status of the monks in the Church. The cathedral chapters were manifestly bodies of priests and their schools were more readily opened to the reception of outside scholars. But what is more to the purpose, neither the monastery nor cathedral schools had a distinct organization; the *scholasticus* was merely one of the monks or canons, or occasionally some outsider employed by them, whose duty it was, under the direction of the abbot or chapter, to instruct the group of scholars made up of both *oblati* and outsiders.

The first important modification of the control of learning and education by the Church was involved in the establishment by Charlemagne of his School of the Palace in 782 in charge of Alcuin. The implied reform, however, was rather in the substance of learning and education than in the form of the schools. The Emperor, consistently with his general policy, aimed not so much to found schools exempt from ecclesiastical control as to found a school suitable for the education of the nobles of his court and the imperial administrative officers and to secure through it the supervision of the monastic and cathedral schools of his empire; far from an intention to do away with the existing ecclesiastical system of education, he sought merely to improve and reinvigorate it. The School of the Palace was hardly more than a cathedral school without the cathedral; Alcuin himself had been *scholasticus* of York before he had been called into

the service of the Emperor, and became abbot of Tours when his years of active service were ended. He was at once the head of the School of the Palace and the imperial minister of education. The schools of the Empire had shared in the general demoralization of State and Church under the Merovingians; the need was not so much to found a new system as to secure the old one from corruption and impotency.

To be sure, Charlemagne was far in advance of his time in entertaining a broader view than his contemporaries of learning as an element in the life of society; he was able to see that education ought to be something more than preparation for the life of a monk, canon or priest, but outside the School of the Palace he sought no new agency for its promotion. The most that he did was to secure an increase in the number and an improvement in the quality of the existing schools, without organic changes in their system. Though in general Louis simply followed the policy of his father, his reign affords a dim view of the future release of learning from the control of the Church. In 822, in his capitulary of Attigny, he insisted that learning and preaching were essential to the welfare of the state and that only those should preach who were well-educated, that each one preparing for successive grades of the priesthood ought therefore to have a place of study and a master, and that schools ought to be provided in every diocese. The higher standard of education demanded made it plain that the unit of the single monastery or cathedral was not large enough; accordingly, in 829, the bishops petitioned Louis to provide for the establishment of three large public schools, open to both monks and clergy, in the three most convenient cities in the empire, "in order that his father's efforts and his own might not fall into decay." The petition, though without results, is incontrovertible evidence of the tendency that was later to result in the growth of the University

of Paris from a cathedral school too large for the control of bishop or cathedral chapter.

Learning and education continued to be almost wholly monopolized by the Church and to find expression through the machinery of cathedrals and monasteries; they were not yet under the control of a body of persons with a distinct and separate social organization for the general reason that their scope was little wider than that of the learning involved in the religious activity of the priest and monk. The differentiation of university from church, of learning for its own sake from learning as part of the mechanism of religious worship, had to await an expansion of the volume of learning itself. The reigns of Charlemagne and Louis contain evidence of the beginning of such an expansion in the existence of a class of scholars in the monastic and cathedral schools and in the School of the Palace who were not to become monks or priests and in the recognition, though indistinct, that learning and education had social functions outside of the Church. As a matter of organization alone, there was no change in the educational system until the rise of the mediæval universities save such as was implied in the establishment of the School of the Palace; but the revival of learning that was to be the indispensable condition of the growth of new educational institutions began to manifest itself in the first half of the ninth century.

The early Christian Church had instinctively repelled pagan learning. It was one manifestation of its exclusiveness. In any conflict of religions it might with reason be expected that the adherents of one would condemn the learning of the adherents of the other along with their religion; most of all, the circumstances under which Christians struggled with their opponents and their insistence on the universality of their religion made it inevitable that pagan learning should share to a large extent in the defeat of pagan religions. In the contest

between a narrow and militant Christianity and the literary store of the Virgils and Ciceros, full of pagan thought and sentiment, literary taste and culture had to yield for several centuries to the condemnation of religious bigotry. But the triumph of Christianity over Roman paganism was not so destructive of classical learning as the conversion of the barbarians. When the higher classes of Romans were brought within the pale of Christianity, they necessarily brought with them an appreciation of the strength and beauty of Greek and Roman letters; the converted barbarians, however, brought little but superstition and rudeness. Even the store of culture added to the society of Christianity by its conquest of the higher classes of Romans must have been small, for it was a religion that had its origin and early growth among the humbler classes; the eventual absorption of the more cultivated part of Roman society could hardly have assured the preservation of the culture that had formerly been monopolized by them. But classical learning had inherent strength. Wherever a remnant of culture and literary taste remained, the appeal of the classical philosophers and poets for recognition was heard. Classical learning was too strong in itself to be utterly destroyed. Here and there a monk had to suffer rebuke from his abbot for concealing a Virgil in his cell, but the abbot himself was more than likely to have his own Virgil. Notwithstanding the theoretical opposition of the monks to pagan learning, it was in their cloisters that its remnants found refuge. Yet the monks degenerated greatly in learning. It is not far from the truth to say that the early growth of Christianity was destruction of pagan culture; what it substituted for it was a body of faith and sentiment that inculcated humility and simplicity in the concrete relations of social life, as taught in the holy Scriptures and in the patristic literature with which they were supplemented. However fortunate that much

of the literature of Greece and Rome was in later centuries to be restored to its place as a part of the world's store of learning, the Church was not to act as a willing agent in its restoration; to some extent that result was incidental to the attainment by the Church of other results more directly aimed at, but for the most part, in its participation in the restoration of learning, the Church received its impulse from without. It was not for the sole purpose of promoting the general culture of society or even of the secular and regular priesthood that the Church at first resorted to the stock of classical learning,—the purpose was much narrower.

Before the ninth century the purpose of the Church was to subordinate learning and education to religion. If a monk or priest were to have learning, it should be only of such character and quantity as would enable him to efficiently perform his religious duties. The learning embodied in the literature of the Church was hardly sufficient; it had to be supplemented with that of the vanquished pagans. The language of the literature of the Church was Greek and Latin, and that of the worship of the Western Church was Latin, which could not well be maintained in its purity without recourse to the works of classical masters. Even if their substance was regarded as dangerous for the Christian, the use of them for the sake of the literary form in which they were cast prevented them at least from becoming wholly unknown and kept them near at hand for the exceptional monk whose taste should tempt him to prohibited familiarity with them. If with passing time the Christian repugnance to pagan learning should be lessened as the actual conflict with paganism and the eventual victory over it receded into the more distant past, its use for the sake of the language in which it was written would serve as a vehicle for its reintroduction as a factor in the advance of society. It is significant that, even in the days of Abelard, the little

instruction on the subject of Latin literature that was given at Paris was imparted under the head of grammar.

The religious life could not be complete in itself, even though for centuries it could be so magnified in the minds of men that other sides of life could be subordinated to it. In times of reliance on tradition, when society was fortunate in retaining what it had without aspiring to more, it could not be expected that the world's body of learning would be created anew; in the nature of things, the wisdom of the Greeks and Romans had to be resorted to as a basis for the practice and worship of Christianity. If the date of Easter was to be determined, pagan arithmetic and pagan astronomy had to be used in determining it. The phenomena of the physical world could be understood, for the most part, only through the medium of pagan learning. Thus the mass of older learning was kept alive by the Church, not as much for its own sake as for the sake of the religion to which it was made subservient. The fact of most importance is that it was kept alive at all. Most of the institutions of the Dark Ages possessed the negative merit of conserving in the presence of destruction. Though the Church did not create a body of secular learning from the fifth to the ninth centuries, it at least preserved from destruction a portion of the older learning, even if only incidentally to the maintenance of its own activity. Moreover, as long as the body of secular learning could be kept subordinate to religion, neither large enough in quantity to approach an equality with it, nor of such a quality as to be seriously antagonistic to it, the monastic and cathedral schools would be a sufficient social structure for it. Charlemagne and Louis saw but dimly the greater importance of learning than the Church had assigned to it. They set in motion, both in the ecclesiastical schools and in the School of the Palace, forces that would so enlarge the social functions of learning and education and so set them

in opposition to the Church that cathedral schools would not be adequate organizations for them and the cathedral school of Paris would become a university.

If the use of pagan learning for the sake of the language in which it was written and for the purpose of supplementing purely Christian learning outside of the strict lines of religion itself had resulted mainly in its preservation, the use of it within the circle of the Christian religion for the purpose of interpreting and elaborating it as a religious system was productive of greater results. Western Christianity was busied until the sixth century chiefly in getting itself established as a religious belief, as a basis of human conduct, in opposition to the pagan elements of Roman and barbarian life with which it came in contact. When it had achieved success and in so doing had incidentally erected a wide-extending governmental structure, the Roman Catholic Church, it entered what constituted the second stage in its development—the elaboration of a system of dogmas. Its first step was to get itself lived; the second to systematize itself and justify the social structure through which it was lived. Until the ninth century most reliance was placed on tradition based on the literature of the Church itself. But the elements of faith and tradition which had produced the superstitious mysticism of the monasteries had to be supplemented by a larger use of reason. As pure reason is merely an implement for the ascertainment and correlation of truth, there could be no sound objection to the use of pagan systems of reasoning in the elaboration of Christian truth. The study of dialectics was accordingly extended in the monastic and cathedral schools, first in the domain of secular knowledge and later in that of Christian doctrine. Alcuin and John Scotus Erigena, in the School of the Palace, gave increased attention to the logic of Aristotle. Rabanus Maurus, *scholasticus* of the monastery of Fulda, with exceptional liberality aimed to

promote the interests of Christianity through ample instruction in pagan literature and learning, and especially in pagan philosophy; his pupil, Lupus Servatus, went even further in the same direction. From the field of philosophy, the use of dialectics passed over into that of theology; the question of the reality of universals could not be solved without threatening the stability of the settled doctrines of Christianity. Anselm, the last of the great monastic teachers, made a critical application of the scholastic philosophy to theology but remained orthodox. Roscellinus, however, in attempting the same work, ended in being heretical. Finally, at the beginning of the twelfth century, Abelard appeared as the greatest exponent, first in philosophy and then in theology, of the speculative spirit that insisted on applying to all things the test of reason, and secured for himself and his teachings the condemnation of the Church.

With Abelard was reached the point at which pagan philosophy ceased to be the willing servant of Christianity. The conflict was between the tendency to apply reason in the elaboration of Christian dogma, championed by Abelard, and the monastic tendency to rely on blind faith and tradition, represented by St. Bernard. Though the latter triumphed for the time, the former was too strong to be permanently defeated. The monastic schools ceased to include outsiders among their scholars, and the cathedral schools became more independent of the Church. But the dominance of the scholastic philosophy was not sufficient to force the Church to the limit of its powers in the control of education. The end of the eleventh and the beginning of the twelfth century witnessed the beginning of a genuine revival of learning, as a part of a more general outburst of human energy. Charlemagne's project of a world empire had failed, and from the ruins of his Frankish Empire had been laid the foundations of modern European states which had been fairly settled by

the end of the tenth century; political and social order had been established in Europe, if even at the expense of the rise of the feudal system. Though the adjustment of the personal elements of the Teutonic peoples and the organic elements of Roman institutions had not been fully accomplished, the turning point of civilization had been passed in the tenth century and humanity had begun again to press forward. Possibly the passing of the millennial year and with it the escape from the apprehended destruction of the world had given to humanity renewed hope and an impulse to advance; the dismal tenth century, at all events, was succeeded by a transitional century in which were gathering the forces that constituted the progress of the four centuries before the Renaissance. Monasticism had taken on renewed life in the Clugniac reorganization in the tenth century and under the reforms of St. Bernard at the beginning of the twelfth century. The crusades, manifestations as well of a renewed spirit and energy as of increased religious zeal among the nations of western Europe, were bringing them together as well as putting them in contact with the civilization of the East. A revival of architecture in the beginning of the Gothic period was at hand. The complete works of Aristotle, previously represented in Latin translations of only a part, were giving a stronger impulse to the scholastic philosophy at the beginning of the thirteenth century.

The schools increased in number and improved in quality. The monastic schools, which in the ninth century had been superior to the cathedral schools, seemed to be impervious to the influence of the scholastic philosophy in the fullness of its development and ceased to contain secular scholars. The cathedral schools, however, located in the larger cities, and exposed to all the awakening influences of the revival of learning and of the more general revival of human activity of which it was

only a part, and less under the conservative influence of monasticism and feudalism, were crowded with scholars.

If a date must somewhat arbitrarily be taken for the beginning of the university era, it must be the beginning of the twelfth century. "Abelard, though not in any strict sense the founder, was at least the intellectual progenitor of the University of Paris."¹ In his lifetime all the forces necessary to account for the rise of the universities came into full operation,—the revival of learning, the antagonism of the scholastic philosophy (and, more broadly, of pagan learning) to Christianity, and the presence of an increasing body of men devoting themselves to learning and education for purposes other than that of the practice of Christianity. Abelard himself was a typical university student and teacher of the Middle Ages.

II—The English Universities

If the history of the English universities is to be divided into periods, there may be said to be three of them: (1) The period from the twelfth to the sixteenth century, characterized by their attainment of their greatest independence of Church and State, the perfection of their system of internal relations and their gradual disintegration into colleges; (2) the period from the sixteenth to the beginning of the nineteenth century, characterized by their increased subjection to Church and State, the substantial maintenance of the system of internal relations (except as affected by the crystallization of the colleges) and the increased autonomy of the colleges; and (3) the period of which the nineteenth century is the beginning, characterized (to the present time) by an increased but more systematic control by the State, the marked loss of influence by the Church, the broadening

¹ Hastings Rashdall, *Universities in Europe in the Middle Ages*, vol. i., p. 42.

of the basis of the system of internal relations, and the decrease of the autonomy of the colleges (tending to convert them into virtual departments of a restored university unit).

It is the intention, in this study of corporations, to consider particularly the rise and development of the English universities; but, strictly speaking, they had, in common with other European universities, their rise and early development in France. While municipalities and guilds, as well as the later corporate companies of the sixteenth, seventeenth and eighteenth centuries, had separate origins, though under substantially similar conditions, in the several nations of western Europe, and were much more uniform in their development than is usually supposed, the university movement was not confined to separate nations in its origin but was peculiarly European in character; it had its rise and development earliest in France; by the time the revival of learning attained such force in other parts of Europe as to demand separate institutions for its expression, it had already assumed them in France. The University of Paris was the great "mother of universities"; the origin of nearly every mediæval European university may be traced directly or indirectly to migrations from it or to intentional imitations of it. On account of the paucity of historical evidence, the nature of the origin of the University of Oxford is not definitely known. It has heretofore been quite generally considered to have had an origin independent of the University of Paris, and to have been evolved from the ecclesiastical schools of Oxford; the latest investigations make it appear likely that it was formed, like most others, by a migration from Paris; in either case, the historian has felt justified in supplying the early unknown history of the one by resort to the known facts of the early history of the other, on the assumption, of course, that if the one was not an offshoot

of the other, it must at least have had a similar origin and early development. There is one striking advantage to the student of the general subject of universities in such a method of treatment: the facts of the rise of the University of Paris show very clearly the connection between the old and new social forces and their organic structure, between the old ecclesiastical schools and the mediæval university, but after it was once established, it was retarded in its further development by its social environment to a greater extent than the English universities; probably the best method of obtaining a clear understanding of the rise and development of the typical European university of the Middle Ages is by studying its rise in Paris and its later development in Oxford.

III—The Universities and the Church

At the end of the eleventh century the number of scholars in Paris noticeably increased. France was the foremost European nation of the time and Paris was the chief city in Christendom. The Carolingian reformation of education and the renewed encouragement of learning had exerted their greatest influence on French schools. France was the source from which the first crusades derived their greatest strength, and the nation in which the reviving influences of contact with the East were most strongly felt. The strength of monasticism, too, was in France; there the reorganization under the Clugniacs had originated and there the reforms of St. Bernard were to have their rise.

The centre around which learning and education revolved in Paris at the end of the eleventh century was its cathedral school. There were other schools at Paris. The school of the Collegiate Church of Ste. Genevieve was on the "Mount" across the river from the Island of Paris; scholars afterwards seceded to it from Paris on

a few occasions and Abelard himself had lectured in it when he had been denied permission to lecture in Paris. A school was also maintained by the canons of St. Victor in which William of Champeaux lectured after he retired from Paris. But it was the cathedral school that grew; the others enjoying no permanent growth. It had formerly been only one among several in France, and it had not been pre-eminent among them; the cathedral schools of Tours and Rheims and the monastery school of Fulda had been widely known in Europe before either the masters or scholars of Paris had given it a superior name. William of Champeaux was its first great master and Abelard its first great scholar; by the time of the death of the latter, in the middle of the twelfth century, the cathedral school of Paris had attained the position of pre-eminence that, as the later university, it long retained. Abelard was the typical mediæval master and scholar; in him are found the qualities that characterized his social class for centuries. His connection with the Church was purely formal. His method of study was critical; in his study even of theology he departed from the traditions of the Church; the study of philosophy and theology which he stamped with his personality was the chief work of the universities of Europe until the Renaissance of the fifteenth century. As a scholar, he wandered from one school to another as he was attracted by the fame of this master or that; as a master, he taught in one school or another as he found the conditions most favorable, and attracted by his reputation a body of pupils, who followed him from place to place. But, except for the large number of its noted masters and scholars and the greater fame of its lectures, the cathedral school of Paris in the twelfth century was like other cathedral schools in Europe; in form and organization it was not distinguished from others.

No university developed out of a monastic school. In



Educational and Eleemosynary 259

the eleventh and twelfth centuries the monks yielded to the secular clergy their place as participants in the revival of learning and education. The reorganization of monasticism in those centuries exhausted its effects within the monastic orders themselves. Monasticism was made stronger in opposition to the social movements of the time rather than in sympathy with them; its renewed vigor was due rather to lessening its points of contact with the world than to increasing them. When next monasticism should make an effort to bring itself into harmony with the intellectual progress of the Middle Ages, it was to be through the medium of the mendicant orders (which were not strictly monastic orders) of the thirteenth century; until that time, the control of the monks over learning and education must have decreased.

It appears that before the intellectual revival of the eleventh century the *scholasticus* was usually one of the monks or canons to whom the duty of instruction was delegated by the abbot or chapter. When it became necessary to give instruction to the increasing number of secular scholars and to provide instruction of a higher grade and quality, the *scholasticus* or his assistants might be non-capitular persons. Next he was found acting more in the capacity of a superintendent of the schools than in that of an instructor in them; then he was frequently known as *magister scholarum*—the master of the schools—and the practical work of instruction was left to lecturers much less likely to be members of the chapter. As the distance widened between the superintendent of the schools and the lecturers, the office of *magister scholarum* disappeared and his place was taken by the chancellor as the representative of the bishop, while the lecturers—masters—suffered less superintendence, being licensed by the chancellor to lecture. Originally the schools were part of the cathedral establishment, being held in buildings connected with or near the cathedral; later they were

held, under some restrictions, in buildings rented by the masters and quite distinct from those of the cathedral, though in their vicinity. Moreover, the masters came to depend upon the fees of their pupils for their maintenance and to depend less on the bishop, his chancellor or the cathedral chapter. Far from sustaining an organic connection with the cathedral chapter, they wandered from one school to another, as the conditions of prospective success or independence attracted them. Masters might not lecture within the jurisdiction of the bishop, however, without obtaining from his chancellor a *licentia docendi* and paying him for its granting such fees as he should demand. The chancellor, moreover, might exercise his discretion to refuse the license, or, if he granted it, might afterwards summarily deprive the master of it; similarly he might prohibit a scholar from further attendance on his master's lectures though the scholar did not need his consent to attend them in the beginning. But Pope Alexander III. (and the third Lateran Council, held in 1179) decreed that no fee should be charged for the *licentia docendi* by the chancellor and that it should be freely granted on demand to any one qualified to receive it. Almost all that was left to the chancellor by the middle of the twelfth century was the authority to exercise his judgment on the qualifications of the applicant for the license to teach. As he had no personal information on which to base a consideration of the applicant's qualifications, he quite unavoidably found it necessary to resort for it to the masters under whom he had studied; it very easily became customary for the chancellor to rely on the recommendation of the applicant's former masters.

Up to this point the masters and scholars had been acquiring distinctness as a class—the first step in the social movement that usually results in corporate institutions; there had been no appreciable development of organic

interrelations between the members of the class. The first step in that direction seemed to have been involved in the admission to membership in the class. When the scholar had received his license from the chancellor,—had become a licentiate—which it would hardly be possible for him to do except on the recommendation of his master, he was not considered by the other masters to be one of them until he had given under the direction of his own master a public exhibition of his ability to serve in the position to which he aspired. His old master then placed the magisterial biretta on his head, bestowed upon him the emblematic ring and open book and received him as a master with a kiss and a benediction; the new master was expected to provide for his fellow-masters a feast, and presents of clothing or money. The entrance of the licentiate upon his duties as a master—such the public exhibition was considered to be—was his “inception,” *principium* (or “commencement”). Later it became customary to permit some of the older and more advanced scholars to begin their preparation for mastership a considerable time before their inception by lecturing to a certain extent on prescribed subjects; they became known as “bachelors.” The terms “master” and “doctor” had the same significance; they signified a scholar who had become a qualified teacher of others, and accepted and recognized as such by his fellow-teachers; the former term came to be restricted in use to the department of arts and the latter to those of divinity, medicine and law. The insignificance of the beginnings of the interrelations of the masters appears in the character of certain statutes or customs reduced to writing about 1210. The masters had made rules, (*a*) prescribing a uniform dress for the members of the body, (*b*) demanding a designated order in lectures and disputations and (*c*) requiring the attendance of masters at the funeral services of their dead colleagues. To secure the observance of the rules the

masters had taken an oath to withdraw their *consortium* from those who should fail or refuse to observe them. One of the masters had suffered the prescribed penalty of virtual expulsion, but his fellows had generously decided to accord him readmission; in order to do so, however, they had to secure absolution from their oath by the Pope. Pope Innocent III. gave his sanction to the readmission of the expelled scholar, and in so doing left the only extant evidence of the rules that had been violated.

The regulative power over masters and scholars, before they attained an autonomous and independent position in the society of their time, was reposed, for the most part, in the chancellor, as the representative of the bishop, and through him of the Church. He had the power and authority of a judge. The masters and scholars were viewed as "clerks," and as such were amenable to the spiritual jurisdiction of the ecclesiastical powers; the chancellor was of course the one with whom they came into direct contact. Yet it was rather a privilege, because through their liability to the ecclesiastical jurisdiction they escaped liability to the harsher and more exacting jurisdiction of the secular courts. Though the chancellor had a prison, incarceration in it was regarded not so much as a punishment in itself as a restraint preliminary to the real punishment, the imposition of a penance or some other kind of spiritual burden. In 1215, the Pope granted to the masters the authority to hold trials of their own scholars, but that detraction from the powers of the chancellor did not prove to be permanent.

The corporations of the Middle Ages were formed more by external than by internal forces. It was not so much the desire of members of a group to attain autonomy and independence, as the desire of other social organizations to accord them such qualities and at the same time to impose upon them corresponding burdens,

that so often resulted in their corporate organization. Thus it was long after the beginning of the thirteenth century before the University of Paris had an official head, and the first movement in that direction was involved in the power conferred by the Pope on the body of masters in 1210 to elect a *procurator ad litem* (proctor) to represent them and make answer for them as a body in suits against them pending before the Roman court.

The attitude of the king towards the body of masters and scholars and the nature of their relations to the townsmen with whom they came in contact is revealed in an event of the year 1200. It was one of the riotous conflicts between students and townsmen so common in university cities and towns in Europe throughout the Middle Ages. The disturbance began in a tavern. An assault on the servant of a German student was followed by an attack on the tavern-keeper by the student and a body of friends among his fellow-students. Thereupon the provost, followed by a body of citizens, stoned the hostel in which the students lived and killed several students, among whom was the German student himself. Upon the demand by the students of redress from the king, coupled with an implied threat to migrate from Paris in case their demand should not be granted, the king imposed severe punishments on the provost and his fellow-citizens that had participated with him in the riot. Furthermore, he conceded to the scholars that such of them as should in future be arrested by either royal or municipal officers should be surrendered at once to the bishop or his representative for trial. It was further provided that the townsmen should take an oath to respect and protect the privileges of scholars and even assume to inform on their own initiative against citizens who should fail to likewise respect them. The provost, as the representative of the body of townsmen, was to take a similar oath before the assembled masters that

he would not violate the privileges of the scholars. Goods of scholars should not be levied on by secular officers and those accused of assault on scholars should not be accorded the choice of trial by battle or ordeal. In the charter it is to be noted, however, that the scholars were treated as individuals; they were treated as members of a class rather than as members of an organized corporate body, except to the slight degree perhaps involved in the appearance of the provost before the assembled masters.

At the beginning of the thirteenth century, then, the University of Paris had been so developed from the cathedral school of Paris that its masters and scholars were recognized by both Pope and King as a distinct class of persons in comparison with the monks and canons of the Church and with the townsmen of Paris. Though the codified rules and statutes under which their activity was regulated were not numerous, they possessed a body of customs sanctioned in use by both Church and State. Their body of powers had been acquired largely at the expense of the bishop and his chancellor and of the cathedral chapter of Paris; as a consequence, their relations to the chancellor, with whom they had closest contact, were rather of opposition than of agreement. Their interrelations as well as their relation to townsmen were still subject to the jurisdiction of the chancellor. They had successfully asserted control over admission to their membership. They had not, however, perfected a system of personal interrelations; they had hardly progressed sufficiently in that direction to need a body of officers or system of government; their relations with other members of society were on a personal basis. The conditions in Paris are found almost exactly duplicated in Oxford where the authentic history of the first English university begins. The parallel is so close that it lends a very strong presumption to the interesting theory

advanced by Mr. Rashdall that the University of Oxford had its origin in a migration of English scholars from Paris about 1167. If his theory must be rejected, the more objectionable theory must be substituted that the University of Paris was intentionally duplicated at Oxford. Similarity of conditions of growth even if conceded could hardly be made to account for so great similarity of structure and activity.

IV—Universities from 1200 to 1550

Early in the thirteenth century the University of Oxford, whatever its prior history may have been, appears to have taken up the course of the development of learning and education at the point to which the University of Paris had already carried it. In a comparative study of European universities, it would doubtless be made plain that in their later growth the University of Paris and both the English universities were intimately connected at many points; important steps in either were likely to be followed by sympathetic changes in each of the others¹; to the extent that the universities of Europe derived their powers from the papal chair and submitted to its supervision, their development was likely to be along the same general lines; moreover, there was an almost constant interchange of masters and scholars carrying with them new ideas and new methods. Leaving out of view in the present study, however, the

¹ For one example of many that might be mentioned,—in 1246, whether or not the enforcement of the rule that no master might teach without a license had been relaxed, Bishop Grosstête was directed in a bull of Innocent IV. not to permit any master to teach in any faculty at Oxford unless, *according to the custom of Paris*, he had been examined and approved by the bishop or his representative.

“ Ut nullum ibi docere in aliqua facultate permittas nisi qui secundum morem Parisiensem a te, vel his quibus in hac parte tuas vices commiseris examinatus fuerit, et etiam approbatus.”—Quoted by Hastings Rashdall in *Universities in Europe in the Middle Ages*, vol. ii., p. 354, note (2).

participation of the University of Oxford in the general university movement in Europe, it may best be considered, during the first period of its development, from the thirteenth to the sixteenth century, according to the changing relations accompanying its contact with its environment on its several sides, and then according to the changes in the interrelations of the masters and scholars, though space may be afforded for only the most important facts. The subject may be conveniently treated under the following heads: (1) Relations to the Church; (2) Relations to the State; (3) Relations to the Town; and (4) Internal Relations.

(1) *Relations to the Church*.—Much of the history of the University of Oxford revolves about the office of the chancellor, because it was at once the medium of connection with Church, State and town, and of the interrelations of the masters and scholars. The conditions under which the chancellor acted in Oxford were so much more favorable to the autonomy and independence of the University than they were in Paris that the University of Oxford approached more nearly the type of the mediæval university after the middle of the thirteenth century than the University of Paris. Oxford, unlike Paris, was not a cathedral city; it was in the extensive diocese of the Bishop of Lincoln and remote from his see. The Bishop of Lincoln was far from wielding as much influence among English bishops as the Bishop of Paris among French bishops. There was no cathedral chapter at Oxford, as at Paris, jealous of the expanding powers of the University. Moreover the see of Lincoln was vacant for forty years before 1214, the period during which the University of Oxford was finding its place as such among the universities of Europe. It is not entirely clear, from the language of the Legative Ordinance of 1214, whether the office of chancellor was occupied at that time, if indeed it had ever been occupied. At all events,

when he appeared a few years later, it was rather in the capacity of head of the University than in that of representative of the bishop. The offices of chancellor and rector, separate in Paris, the former as the representative of the bishop and guardian of his rights, and the latter as head and representative of the University, were merged in Oxford, though the chancellor (as Grosstête) was sometimes also called rector. His powers were at first quite identical with those of the chancellor of the Bishop of Paris: he granted licenses to masters and deprived them of their licenses and had power to deny the privileges of the masters' lectures to scholars; moreover, as an ecclesiastical judge, he had a limited jurisdiction over masters and scholars (as clerks) which he enforced by penance and excommunication. But the most important fact in the early history of Oxford is that the relations of the chancellor to the bishop were so distant as to permit the future transference of the basis of his power from the Church to the body of masters themselves. He always appeared, not as the upholder of episcopal rights, but as the champion of the University's privileges. In 1257, when the dispute of the Bishop of Lincoln and the University as to the rights of the latter was reviewed by the King on the question of the authority to impose suspension from regency as a penalty for neglect to attend Congregation, the chancellor, instead of having espoused the cause of the bishop, had evidenced his identity with the University by sanctioning the decree of suspension, while the bishop had been left to rely for the protection of his rights on a formal objection in his behalf by the Archdeacon of Derby; the disclaimer by the University of an intention to infringe on the rights of the Bishop of Lincoln or his church could not have been entirely disingenuous.

The chancellor had originally been appointed by the Bishop of Lincoln. The first departure from the rule

was in basing the appointment on the recommendation of the University. Step by step the point was reached where the bishop's part in the selection of a chancellor consisted in a confirmation of his election by the University. In 1300 it had for some years been a subject of dispute whether the chancellor was elected or merely nominated by the University; in that year the question was conceived to be involved in the more technical question whether it was the duty of the chancellor to call in person on the bishop to receive his confirmation of the choice already made by the University; eventually the bishop issued the commission to the newly chosen chancellor without insisting on the strict observance of the rights that he claimed, but with the reservation which had become usual that it was done *de gratia speciali*. A half-century later, in 1350, the Bishop of Lincoln had delayed to issue a commission to a newly chosen chancellor; thereupon his superior, the Archbishop of Canterbury, interfered with an admonition that he proceed to issue the commission at once; when the admonition had been unheeded, the archbishop himself issued the commission. When the matter reached the Pope for review, he recognized the right of the archbishop to issue a commission to a chancellor of the University, but only in case of neglect on the part of the Bishop of Lincoln to issue it. In 1368, the confirmation by the bishop had become a meaningless form and had even not been sought in some cases; at that time the Pope decreed that in future it be altogether dispensed with. The revolution was complete; the chancellor, at first the representative of the bishop and appointed by him, had become the head of the University and elected by it.

The Church was tenacious of its jurisdiction over masters and scholars, based on the theory that they were clerks and having its origin in the times when it was true that they were under its direct protection. Before the

chancellorship had become firmly settled, it was provided by the Legative Ordinance, in 1214, at the conclusion of the trouble between King John and the Pope, that if the townsmen of Oxford should arrest a scholar, they should at once surrender him "to the Bishop of Lincoln, the archdeacon of the place, or his official, the chancellor, or to whomsoever the Bishop of Lincoln should have appointed to this office." Near the end of the century, in 1280, when the contest between the Bishop of Lincoln and the University was at its height, the latter claimed and by solemn oath in congregation undertook to maintain against the former certain jurisdictional powers then exercised by the chancellor and by them declared to have been exercised by him customarily "from time out of mind": (*a*) that a layman might be cited by a scholar before him, (*b*) that the probate of scholars' wills lay in him, (*c*) that he had the right of "inquisition" into the moral conduct of scholars and (*d*) that masters might insist on pleading in his court alone in matters relating to contracts entered into with the University. Though the chancellor himself was not inclined to go as far as the masters in his claims of jurisdiction, he would concede no more to the bishop than that he might exercise jurisdiction on appeal or in case of the chancellor's neglect or failure to exercise it. Later, when the matter came up before a provincial convocation of bishops for consideration, the archbishops and other bishops were found in opposition to the Bishop of Lincoln; his claims were accordingly disregarded and the extreme position of the University was fully sustained; instead of to the bishop, appeals lay from the chancellor's court to the organized body of masters themselves. The bishop yielded with the usual formal reservation that his concession was "an act of pure and voluntary grace." If exemption from the jurisdiction of the Bishop of Lincoln was broad, the exemption by a bull of Pope Boniface IX., in 1395

(though it was revoked by John XXIII. in 1411), of the University from that of all "archbishops, even *legati nati*, bishops and ordinances" could hardly have been more comprehensive. The chancellor's court had originally or at least in 1214 been merely that of the bishop's officer; in 1280 his jurisdiction had become so independent that the bishop lost even the right of entertaining pleas on appeal; little more than a century later, the only ecclesiastical jurisdiction superior to the chancellor's was that of the Pope himself. While in 1214 the grant of jurisdiction had been to the bishop or to the chancellor as his representative, such grants after 1300 were to the chancellor alone—and he had then become the representative of the University.

A noticeable and important tendency in the history of the University of Oxford (and one that will be the subject of further comment) was that of the Pope to grant privileges to the University, even against the episcopal and higher ecclesiastical ranks. For an example, in 1254, when Alexander IV. confirmed "the immunities, liberties, and laudable, ancient and rational customs, and approved and honest constitutions from Innocent IV.," he also granted to the masters and scholars of the University exemption from summons by papal delegates to answer outside of Oxford concerning contracts made within it.¹ In the same year, when the University was involved with Henry of Lexington, Bishop of Lincoln, in the long dispute over their conflicting rights, the Pope appointed the bishops of London and Salisbury "conservators of the rights, liberties, and immunities of the university." The extraordinary exemption of the University from the jurisdiction of all ecclesiastical powers but that of the Pope himself by Boniface IX. in 1395 has already been alluded to.

The withdrawal of the monks from the educational

¹ Rashdall, vol. ii., p. 367.

field in the tenth and eleventh centuries has already been noted¹ and an explanation of it has been sought in the great change in the attitude of the monastic orders towards the rest of society. The general purpose of St. Francis and St. Dominic was to make their orders a force in society, while the ideal of St. Benedict and St. Bernard had been to make the monastic life complete in itself; if the Mendicants passed lives of humility and self-denial, it was not so much because the hardships involved were valuable in themselves as because they enabled them more effectively to accomplish among other men the work they had set themselves to do. The Mendicants were not wanting in an appreciation of the weight of the new social factor of revived learning, as represented by the universities of Europe, but they were justified in viewing it to some extent as a weapon in the hands of rivals that might be serviceable in their own hands. Accordingly, within a few years after their orders were founded, both the Dominicans and Franciscans appeared at Oxford, the former in 1221, the latter in 1224. Likewise, later in the century, the Carmelites appeared in 1256 and the Augustinians in 1268. The matters of interest are of course the nature of their relations to the organized body of masters and scholars and the effect of their contact. The universities were the embodiment of the new social element of learning and education; the Mendicants were the instruments through which the partially re-awakened Church sought to recover, among other things, the power that it had earlier exercised in the field now covered by the universities. What was to be the result of their coming in contact?

The Dominicans and Franciscans at first set up their schools within the city of Oxford; but before many years they found that their relations to the University would be more faithfully reflected in a location outside its walls;

¹ *Supra*, p. 254.

they accordingly retired to the suburbs, whither they were followed by the later Mendicants. They assumed an attitude of comparative independence, pretended to educate their scholars in their own schools and according to their own methods and promised no allegiance to the statutes of the University. In 1252 a statute was passed by the University that inception as a doctor of theology be preceded by a period of lecturing as a bachelor and by inception as a master of arts, unless the chancellor and regent-masters should consent to dispense with the requirements. The statute was important not so much in results due to its enforcement as in the assertions of right involved in it. The inception as master of arts involved the taking of an oath of obedience to the statutes of the University that would not have to be assumed by the scholar who incepted in theology without having taken the preliminary course in arts. As a matter of fact, either because the statute was not enforced or because it was found easily complied with by the Friars, there was no serious friction in the thirteenth century. It was perhaps owing to the comparative weakness of the University itself during the first century of its growth that contact with the Friars resulted in no harsh relations; the University was occupied during the second half of the thirteenth century in its long and at times bitter conflict with the Bishop of Lincoln, in achieving a degree of independence of him that was necessary to its own existence; it will be seen later that during the same time it was accumulating powers drawn from both king and town and perfecting its internal government. The fourteenth century was the century of the universities' greatest independence while the first half of it was that of the Mendicants' greatest vigor; it was inevitable that the incompatible aims of independence on the part of the Friars and of control on the part of the University should result in a trial of strength.

Its victory of 1300 over the Bishop of Lincoln had hardly been won when the University began to take measures to bring the Friars under its control. The examinatory sermons of bachelors of theology had been delivered at the Friars' convents until 1303, when it was ordered by statute of the University that henceforth they be delivered in St. Mary's, the University church. Seven years later the same measure was taken with regard to the sermons preached by doctors of theology on the eve of their inception, the theological vespers; those were also removed from the convents to St. Mary's. It was even required that the degree of bachelor of theology, previously conferred in the Mendicants' separate schools, be taken in the University. Under the statute of 1252, graces dispensing with some of the requirements for inception had been freely granted, but now all requirements were insisted on, and perhaps with unnecessary strictures. Not only were no degrees to be conferred unless the recipient should take an oath to render obedience to the statutes of the University, but even Friars who were already masters or doctors were required to take the oath, and one Dominican doctor was actually expelled for his refusal to take it. Further stubbornness on the part of the Friars was punished by their excommunication by the Archbishop of Canterbury—a punishment that entailed loss of revenue from confessions, and defections of auditors from sermons and of scholars from the schools. Their greater unpopularity, due to their unyielding attitude towards the University, intensified the opposition of secular preachers and townsmen to them.

But the conflict was not strictly between the Friars and the University. The four faculties of the University were those of arts, medicine, law and theology. The Mendicants aimed to fortify themselves by controlling the theological faculty and maintaining it in independence of the other faculties, the conflict, then, on its organic side

VOL. I.—18.

was within the University. At the outset, in 1303, what might be called a constitutional statute was passed that a statute should be valid in the whole University if passed by the regents of only two faculties and a majority of the non-regents. The statutes passed in 1310 removing the theological vespers to St. Mary's and requiring the degree of bachelor of theology to be taken in the University lacked the concurrence of the theological faculty, but were nevertheless enforced. The matters in controversy, including that of the granting of graces or dispensations by the chancellor and regent-masters, were taken at once before the Pope. After investigation and hearings in England by a body of four (two secular and two regular) arbitrators, it was decided, as to graces, that every master should take oath not to deny them to a Friar "out of malice, or hatred or rancor," though he might do so "for the common utility and honor of the university"; such a denial should be referred to the chancellor, proctors and regent-masters of theology, who upon hearing the reasons assigned by the objecting master, might either sustain or overrule his objection; the constitutional statute passed in 1303 was virtually sustained by a decision that a valid statute might be passed by a majority of three of the faculties, the non-regents being counted as one faculty, which majority, however, should include the faculties of arts and non-regents; due notice to all voters was provided for by the requirement of a preliminary promulgation of each proposed statute in a general congregation of regents, at which a copy of it should be served on a master of each faculty, the voting to take place fifteen days later. The decision was sanctioned and enforced by both Pope and King in 1314. Though the conflict was prolonged for a few years, it finally ended in 1320 in the surrender of the Friars to the University. In 1358, the University easily enforced a statute forbidding the Friars to accept as novices boys less than eighteen years of age.

It was likewise provided by statute that at no one time should more than one doctor in each Mendicant order have a seat in convocation. By the bull of Boniface IX., in 1395, the Friars were not exempted from the comprehensive jurisdiction of the chancellor, but were expressly made subject to it.

The fourteenth century, as it has been suggested, was the century of the greatest independence in the University of Oxford. In the second half of the century the independence to which both King and Pope had contributed resulted in the rise and growth of Wycliffism. The University formerly honored with the name of "the second school of the Church," became under the influence of Wycliffe and his followers, as Archbishop Courtenay well described it, "the university of heresies." But it was soon restored to conformity with the Church, though not so much through the efforts of the Church itself as through the intervention of a monarchy more zealous for it than the papacy. The Catholic Church, moreover, had been largely nationalized in England and had to look to the King for support. So thoroughly was the University permeated by the spirit of Wycliffe that an order to condemn the heresies of Lollardism met with no compliance in 1409. In 1411 they were condemned by the Council of London. The subjection of the University was accomplished and its future subservience assured through the restoration of the episcopal power of visitation. Though at first, in 1411, the visitation of the Archbishop of Canterbury was resisted, even when supported by a royal writ that such power belonged to him, submission soon followed—even before Parliament, in the same year, had confirmed the power of the Archbishop as visitor. The submission was followed at once by the passage of a statute by the University that disseminators of Lollardism should be punished by excommunication, that candidates for degrees should abjure it and that heads of colleges

and halls should exclude all who promoted or were even suspected of promoting it. In 1414 the University was so spiritless as to submit to visitation even by the Bishop of Lincoln, though the right had been recognized by King and Parliament only in the Archbishop.

The suppression of Lollardism left the University of Oxford intellectually stagnant, nor was its intellectual activity aroused until the Renaissance in the second half of the fifteenth century introduced a new element. Wycliffe was the last of the scholastic philosophers and the heretical movement that bears his name was the last effort to reform Catholicism by the older method. Wycliffe is called the "morning star of the Reformation"; he was more truly the "evening star of scholasticism." But until the Reformation in the sixteenth century, the University of Oxford remained passive beneath the control of the Church; its constitutional structure had been perfected (as far as influenced by the Church) by the beginning of the fourteenth century; by the beginning of the following century the Church had simply imposed upon it the visitorial system that kept it within the bounds of orthodoxy. In the first stage of its development, the Church had conceded its independence largely because it was unable to prevent it; in the second stage, the Church restrained it without destroying its autonomy; in the third stage, the Church was to recognize its strength and use it as an implement for the advancement of its own interests. But the third stage was to begin with the Reformation. A forerunner of future conditions was the concession (in 1490) of power to the chancellor (with the faculty of theology) to license preachers to serve in any diocese of England.

2. Though the powers of the University of Oxford had their source in the Church, and though the masters and scholars were considered to be under its special protection and jurisdiction, the field of learning and education

was left to the Church no more exclusively than any other, however strenuously the ecclesiastical claims might be advanced. It is hardly necessary to suggest that there was no strictly drawn line which Church or State refrained from crossing, from one side or the other. Before the Reformation the most usual course pursued by the University in its accumulation of powers was to secure their concession by both Pope and King, whether the one conceded and the other sanctioned and confirmed or each conceded separately, the one by papal bull and the other by royal charter. The extent of the King's interference in matters over which the Church had theoretically exclusive control varied only with the conditions and circumstances of the time. After the complete victory of Innocent III. over John, it could hardly be expected that royal approval would be sought for any measures decided on by the Church. During the fourteenth century the Church was being "nationalized" to a certain extent and the exercise of ecclesiastical authority was conditioned to an equally increasing extent on royal assent. At the end of the fifteenth century the monarchy was found almost outdoing the papacy in its zeal to bring the University back into harmony with the orthodox teachings of the Church. The University itself was not likely to discriminate nicely between matters to be laid before the King and those to be laid before the Pope. If the removal of a chancellor or proctor seemed to promise relief from an abuse that had caused complaint, the King did not hesitate to apply the remedy summarily without regard to the officer's relation to bishop or archbishop or Pope. The clerical exemptions and immunities of masters and scholars did not always avail to preserve them from imprisonment by royal order. Disputes relating to matters within the control of the Church were constantly referred to the King and peremptorily settled by him.

The King sustained exceptionally paternal relations to the University. With good reason he regarded the famous seat of learning as an ornament to his realm. Whenever the body of masters and scholars came into collision with any other class or power, the complaints that they were usually only too ready to make were very likely to find a willing listener in the King. Scholars on the way to and from Oxford were accorded special protection from violence. When the Jews of Oxford became extortionate in their demands of usurious interest, a royal writ was speedily issued to set a reasonable maximum rate. When a migration of dissatisfied masters and scholars from Paris took place, a cordial invitation to attach themselves to the English universities was extended to them. When there had been secessions of considerable numbers of students from Oxford in 1260 and 1263, and they had migrated to Northampton and there founded a new university, the King saw fit soon afterwards to abolish the new university by royal writ and order the seceding scholars to resume their place in Oxford. In the frequent ruptures with Oxford townsmen, the clerks were always able to get more than justice at royal hands. If the Bishop of Lincoln was striving to regain his diminishing authority over the University, he could count on no assistance from the King. When the Mendicants sought to maintain their schools in independence at the side of the University, or to intrench themselves in the control of its theological faculty, the royal sanction was cheerfully given to an award making them subject to statutes of the University that could be passed against their will.

As might be expected from the extent of the field over which the Church exercised control of the affairs of the University, and within which, consequently, the King was not so likely to exercise his full authority, the principal matters in which he interfered were those involved in the relations of masters and scholars to townsmen and to

the royal courts. There was a multitude of particular disputes between the University and the city of Oxford in which he intervened without establishing a system of organic relations between the two bodies. The University frequently made complaints of the unsanitary condition of the narrow and filthy streets and alleys of the city—due in one case to the habitual burning of fat by the citizens in the streets before their dwellings—and of the faulty condition of the pavements or of the foulness of water used by townsmen in making bread and beer; such complaints invariably elicited royal orders for the summary amendment of the conditions complained of. The royal prodigality in conferring on the University substantial municipal powers, at the expense of the city corporation, until it became itself virtually a municipality, will appear when the organic relations of the University and city of Oxford are considered.

If the description of mediæval university life that historians have constructed from the scattered sources are faithful, the mediæval scholar must have come into close and frequent contact with courts of justice. As early as 1214 the right of the chancellor to assume jurisdiction of a case in which a scholar was a defendant had been granted by a Legative Ordinance. In 1275 jurisdiction was conferred by royal writ on the chancellor over all personal actions in which a scholar should be a party, whether defendant or plaintiff. In 1288 the chancellor's jurisdiction was extended beyond the walls of the city so as to include the students' playground, Beaumont Fields. In 1290, of all cases in which either party should be a scholar, only such as involved a charge of mayhem or homicide were left outside his jurisdiction. The King's bailiff was punished for having held the chancellor's authority in too slight esteem and was for the future subjected to his orders, though he might, if aggrieved, make complaint to the King. In 1405 the apex of judicial

authority seems to have been attained when Henry IV. granted to the University the authority to demand and assume jurisdiction over privileged persons (masters and scholars and their defendants, and the officers and employees of the University) charged with felony; they were to be tried by a jury composed in equal parts of privileged persons and townsmen, before a steward, who should be appointed by the chancellor but approved by the Lord High Chancellor.

There was no end of factional troubles among masters and scholars, ranging from mere personal disputes to conflicts between faculties over their relative authority. Unless the Pope or archbishop should intervene,—which was less probable after the end of the thirteenth century,—the royal court was the only forum in which such troubles could be adjusted. The right to expel a master, or to adopt a particular mode of procedure, was very likely to be drawn by the defeated party before the King for his determination. In 1413 an act was passed by Parliament providing for the expulsion of the Irish from the University because of their insubordination; the act is said to have been enforced three years later.

Down to the end of the fourteenth century the general policy of the Crown and Parliament was to concede liberally to the University such authority as an independent exercise of its powers seemed to demand. It was viewed as an object in itself; though the King might take pride in the increase of learning and the growth of a learned class, the universities were not considered to be a necessary element in the life of the English people and in the operations of the King's government. A change in the view was first caused indirectly through the Church. During the second half of the fourteenth century the Catholic Church in England was undergoing the process of nationalization that was to result in the sixteenth century in a separate national Church; the Crown was gradu-

ally assuming the control over the Church that had been exercised by the papacy. When the independence of the University of Oxford found expression in heretical Lollardy at the end of the fourteenth century, the King was even more ready than the bishops to restore it to orthodoxy. The distinction between relations to Church and relations to King becomes more difficult to maintain; the two sets of relations become to a large extent identical. When the restoration of the visitorial power of the Church over the University became necessary to undo the work of heresy and prevent its recurrence in the future, the archbishop fortified himself with a royal order and later with a parliamentary statute in confirmation of the right asserted by him. The time had arrived when the developed monarchy would primarily use the Church to strengthen its own position and would secondarily prevent the universities from asserting their independence against the Church. The independence earlier conceded to the universities had sufficed to show what strength they might exert; now such strength was not to be permitted by the Crown to detract from that of the Church.

The change appears plainly in the later development of the chancellorship. During the thirteenth century, when the form of the University of Oxford was being gradually evolved, the chancellor's term of office was two years. The accumulation of powers (especially judicial and administrative powers) by the University had been largely in the person of the chancellor; the University's control of him and its enjoyment of the powers wielded by him had been maintained by the body of masters and scholars largely through their election of him for short terms of office and through their ability to obstruct him in the performance of the activity of his office. When the constitution of the University had become well settled at the beginning of the fourteenth century, and the separation

of the chancellor's office from the Church had become fully accomplished, re-elections of the chancellor, which formerly had not been frequent, began to be more usual. During the fifteenth century the tenure of the office became permanent and its occupants, instead of residing in Oxford, were non-residents. The chancellor resided at court and his active duties in Oxford were performed by a vice-chancellor, whose appointment by the chancellor was perfunctorily confirmed by convocation. Instead of being the medium through which the autonomy and independence of the University was exercised, the chancellor had become the instrument through which its dependence on the Crown was assured. Between the revival of the right of visitation in the Church and the control of the chancellorship by the Crown, it was possible to make the University completely subservient to an autocratic monarchy and a narrow prelacy, while it was left out of harmony with the mass of the people. But it must be said that the attitude towards the University was rather negative than positive; the aim was rather to restrain it from exercising dangerous autonomy than to use it as a positive instrument in furthering the aims of Church or State; the change to the latter attitude followed the Reformation in the sixteenth century and belongs to the second period of the history of universities in England.

3. *Relations to the Town.*—The relations of the canons of cathedral chapters and monks to the citizens of mediæval towns had not always been harmonious. Any privileged class within the town walls, whether protected by King, noble, bishop or abbot, had usually to defend their privileges with vigor if they were not to fall before the strong corporate spirit of the town. As a general rule, the towns succeeded before the end of the Middle Ages in bringing the privileged classes within them into substantial conformity with their own population. In the case of the universities, however, the town was

destined to defeat in its struggle with the privileged class of masters and scholars.

In 1209 occurred in Oxford one of those riots between townsmen and scholars that were so important because they frequently entailed a readjustment of the organic relations between town and university at the hands of the higher authorities of State and Church. When it became known that some scholars had killed a woman, the mayor and burgesses made an attack upon their hostel for the purpose of arresting them. They seized some of the occupants of the hostel and later executed two or three of them; the ones (so it is said) who had been instrumental in causing the death of the woman, having sought safety in flight, were not apprehended. The strongest weapon of the mediæval university before 1400 in its contests with townsmen was its power to remove from one place to another with slight inconvenience to either masters or scholars. The University as a body owned almost no property. There was no large fixed library and the University owned no buildings; the few books in use belonged to the masters, who read them to their scholars, while the houses used for schools or hostels were rented from townsmen or other owners. The towns usually depended largely on the bodies of masters and scholars for their prosperity; few measures that the University could take would injure the town more than to simply leave it. A modified form of the same punishment was a cessation of lectures, the power to declare which the Pope at one time granted to the University of Paris for its own protection. Contrasted with the Benedictine monk, who had been required to take an oath of *stabilitas loci*, the mediæval scholar found protection for his liberty in *instabilitas loci*. When the disturbance took place in Oxford in 1209 it resulted in a *suspendium clericorum*; most of the masters and scholars dispersed in several directions, some of them collecting in Cambridge and

there founding the University of Cambridge. Matthew Paris is authority for the statement that the scholars dispersed amounted in number to three thousand. King John was already embroiled in his dispute with Innocent III., and no heed was given to the trouble between the town and University of Oxford until the submission of John in 1213. In the following year the Pope's legate issued his Legative Ordinance for the settlement of the present and the avoidance of future difficulty in Oxford. In reparation of their unjust treatment of the scholars, the townsmen were to march in procession, without shoes or coats, to the graves in which they had buried the executed scholars and thence remove them to the cemetery—an act very material to the welfare of the souls of the dead. Each year forever afterwards the town should make a payment of forty-two shillings for distribution among poor scholars, and on St. Nicholas's Day each year they should provide a feast of bread, beer, pottage and meat for one hundred poor scholars to be selected by the Abbot of Oseney and the Prior of St. Frideswide's with the assistance of the Bishop of Lincoln, the archdeacon of the place or his official or the chancellor. If the townsmen should in future arrest a clerk, they should surrender him to the Bishop of Lincoln or his representative (archdeacon or chancellor) for trial. Victuals should be sold by townsmen to scholars at reasonable prices. For twenty years the rent of hostels and schools should be what it had been before the dispersion of the scholars, except that one half the rent for the first ten years should be remitted; after the expiration of the twenty years, the rent should be taxed by four burgesses and four scholars jointly. Observance of the provisions was assured by requiring an oath to be taken annually by fifty (or as many as the bishop should demand) substantial burgesses. Masters who had continued to lecture after the secession of the other masters and most of the scholars, were punished

by suspension for three years from the exercise of the privilege of lecturing.

The chancellor had no prison in which to confine clerks awaiting trial or sentence in his tribunal. In 1231 the mayor and bailiffs of Oxford were required by order of the King to permit the chancellor to use for his purposes the prison belonging to the town. A little later the constable of the royal castle of Oxford was likewise required by another royal order to permit the chancellor to make use of the castle prison in addition to that of the town. Furthermore, both the royal and municipal peace officers were placed at the disposal of the chancellor in the administration of his court; the sheriff as well as the mayor and bailiffs was required to afford him assistance in putting his orders and decrees into effect.

In 1244 another constitution-making riot took place. There had been considerable friction between the scholars and the body of money-lending Jews that had settled in Oxford. The mediæval student appears to have been generally impecunious. A vicious raid was made by a mob of scholars on the Jewry which was stayed only when fifty of the raiders had been thrown into prison. Yet when the matter was referred, in the usual course of such matters, to the King, he assumed the attitude characteristic of him when either scholars or Jews were involved. In a charter he conceded that henceforth the Jews should receive no more than twopence in the pound per week for interest on loans made to scholars. To insure justice—to the scholars—future disagreements between them and the Jews with relation to the payment of loans and interest were to be brought before the chancellor for his adjudication. The occasion afforded the King an excuse for conceding also that the chancellor assume and exercise jurisdiction in all matters of debt, rent or prices, and of contracts relating to personal property, in which a clerk should be a party. Four years later

a second charter authorized the chancellor and proctors to be present at and assist in the assize of bread and beer held by the mayor and bailiffs of Oxford; the mayor and bailiffs were also required on entering upon their term of office to take oath that they would respect the liberties and customs of the University. In 1255 an additional assurance of the rights of scholars was provided in the requirement that a layman who should make an assault on a clerk should be imprisoned in the tower of the castle until he should make such satisfaction to the clerk as should meet with the approval of the chancellor. Edward I. confirmed a custom that houses in Oxford once rented by masters or scholars for schools or halls could not be let to laymen as long as clerks should stand ready to take them; he also confirmed the older custom of the taxation of halls by a joint board of burgesses and representatives (called taxors) of the scholars, which had been approved by the Legatine Ordinance of 1214. In 1275 scholars were exempted by royal writ from view of frank pledge, aids, talliages, watches and other similar burdens to which townsmen were subject. The chancellor was given power, to a certain extent, to regulate the peace and quiet of the town by restraint of vicious classes, as by the imprisonment of prostitutes. In 1288, as already suggested, the jurisdiction of the chancellor was enlarged so as to include Beaumont Fields, the playground of scholars without the walls of the city. Two years later cases of mayhem and homicide were made the only ones beyond the jurisdiction of the chancellor, if only either party should be a clerk. Two years later the jurisdiction was made to cover all civil actions that should arise in Oxford and all criminal actions (excepting only cases of mayhem and homicide) if a clerk should be a party in either class of actions; and all the servants of clerks, as well as bedels, parchment-makers, illuminators, copyists, barbers and all others "of the clothing of the clerks," were to enjoy the clerical

exemptions, except that they should be subjected to the burdens of taxation borne by townsmen if they should embark in business. The chancellor was given authority to survey and condemn unsound food in the town market.

In the middle of the fourteenth century—more exactly, in 1354—the most sanguinary fight between University and town in their history took place,—and was followed, as usually, by the royal concession of additional privileges to the chancellor and University and of scant justice to the offending townsmen. Both parties surrendered all their charters absolutely into the hands of the king. By way of partial reparation of damage done, the town was required to pay to the University the sum of £250 as satisfaction for all damage except such as arose from mayhem and homicide; all goods of scholars seized by the townsmen were to be returned. An interdict imposed on the town was raised on the consideration that annually in future the mayor and bailiffs at the head of sixty burgesses should appear in the church of the University (St. Mary's) and there celebrate mass for the repose of the souls of clerks who had been killed in the riot; each of them, in addition to their defraying the expense of the mass, should make an offering of one penny, of which poor scholars should receive forty pence and the curate of the church the residue. As part of the readjustment the king conceded to the chancellor the authority to impose punishment for bearing arms or disturbing the peace, whether by scholars or townsmen; the assessment and taxation of scholars and others likewise privileged; the assize of bread, wine and ale; the assize of weights and measures (conducted by a clerk of the market); the punishment of regrating and forestalling, and the survey and "correction of victuals"; and control of the cleansing and paving of the streets. The limit of jurisdiction, previously set at the crimes of mayhem and homicide, was removed in 1405, when Henry IV. granted to the

chancellor the power of withdrawing from the regular courts the cases of privileged persons charged with felony; but they were to be tried not by him in person, but by a steward appointed by him subject to the approval of the Lord High Chancellor, before a jury composed in equal parts of townsmen and privileged persons. Another remarkable function later exercised by the University was that of conducting inquisitions into the delinquencies of the townsmen; there was nothing startling in the claim advanced by the University in 1280 that the chancellor should have the power to inquire into and correct the delinquencies of scholars, but it is no uncertain evidence of the humility of the townsmen that they permitted their town to be divided into districts, each to be assigned to a doctor of theology and two masters of arts for the collection of evidence, and their fellow-townsmen to be brought before the chancellor for excommunication or the imposition of penance. Tournaments and jousts were also forbidden in Oxford or its vicinity, and the chancellor might exercise a censorship over or even forbid theatrical performances. .

So effectually had the University of Oxford withdrawn one power after another from the townsmen and so persistently had it increased its positive control over nearly every department of their municipal life that the latest writer on mediæval universities is fully justified in declaring: "By the middle of the fifteenth century the Town had been crushed, and was almost entirely subjugated to the authority of the University. The burghers lived henceforth in their own town almost as the helots or subjects of a conquering people."¹

4. *Internal Relations*.—A corporation is distinguished from a mere class or order chiefly by the internal system of relations between its component members. A group

¹ Hastings Rashdall, *Universities in Europe in the Middle Ages*, vol. ii., p. 411.

of persons that may be called a corporation must have such governmental machinery that its group unity may be assured, its character as a group perpetuated, and the objects of its existence accomplished. The body of masters and students in Paris at the beginning of the thirteenth century were hardly more than a mere class. A beginning in the direction of self-control had been made in the assumption by the masters of the control of admission to their status. Before that step had been taken the body of masters and scholars had been merely a class of persons without a code of exceptional rights in society save such as were due to their connection with the Church, without control of their own membership and without an organization through which to independently accomplish their purposes. Even the Legatine Ordinance of 1214, by which the masters and scholars of the University of Oxford were accorded substantial privileges, was not addressed to them, but "to the burghers, bishop and all the faithful in Christ." The chancellor had been the agent through whom the Church directed and regulated the activity of the group. In Oxford the relations of the Church to the University were so loose, owing to the want of a close connection between the Bishop of Lincoln and the chancellor or whatever resident representative occupied his place in Oxford, that the chancellor by degrees became the head of the University, elected by it and maintaining its immunities and privileges even against the bishop himself; the act of confirming the choice of the University had become an empty form and had been dispensed with by the end of the thirteenth century.

The earliest division of the body of masters and scholars was into nations. The origin of the division, found in all mediæval universities, is involved in obscurity. It is not difficult to imagine that in Paris scholars of the same nationality may have associated in their social life by living in the same hostels or in the same neighborhood,

and the tendency may have been strengthened if foreign students were governed in their relations to one another by the laws and customs of their own country, but the facts that there were four nations in Paris and that some of the nations were composed of scholars of divers nationalities seem to indicate that what may have originally been a spontaneous grouping on the basis of nationality was soon taken advantage of for other purposes. The mediæval student was likely to be a turbulent person and his turbulence was not likely to be mitigated by his surroundings; nor was there a very wide social gulf between the scholar and his master. It was a quite universal principle in the Middle Ages that the preservation of the peace should be accomplished by binding groups, on whatever basis formed, by mutual oaths and by requiring them to elect a representative to act as their foreman, stand responsible for their keeping their oaths and aid in their enforcement either by punishing violations or reporting them to higher powers. It was a refinement of the essential principle of feudalism. As in that of Paris, so in most other mediæval universities, there were four nations. Early in the thirteenth century, at least as early as 1228, four nations existed in the University of Oxford, each with its elected head. In the course of a few years, certainly before the middle of the century, the four had been reduced to two nations, those from the north of the Trent being known as Northerners, and those from the south of the river as Southerners; the Scotch were included in the former, the Irish and Welsh in the latter. If members of different nations fell into a quarrel, they could rely for assistance on the nations to which they belonged. Settlements of such quarrels as well as of others involving the nations more generally were frequently made by representatives of the nations, the settlement being ratified at a meeting of the nations including masters and scholars. Such settlements were sometimes very

formal in character, articles of peace being drawn; each student then was required to take an oath that he would observe them, the elected leaders being also bound by oath to have them enforced and report violations of them. That the organization by nations extended a little beyond the keeping of the peace is indicated by the provision of a charter of Henry III. granted in 1248, by which the two proctors (elected representatives of the nations) were permitted to participate with the chancellor in the assize of bread and beer held by the mayor and bailiffs of Oxford. But though in other mediæval universities, and especially in that of Bologna, the organization by nations came to be the predominant organization, in Oxford it disappeared several years before the end of the thirteenth century. The two proctors, however, continued to be chosen from north and south and to perform certain duties as executive officers, such as to summon and preside at congregations, and to demand oaths to preserve the peace, but they were properly considered not as chiefs of separate divisions, but as officers of the whole body.

It must not be assumed that all the university life revolved about the centre of the organization of nations. In general, during the whole thirteenth century the centre of activity at Oxford was in the process of determination. The Church, through the Bishop of Lincoln, had contained the original centre; the body of masters succeeded in establishing a competitive centre; the wider body of masters and scholars, as organized in nations, possessed a centre for some purposes. The transference of authority from the Church to the masters through their gradual assumption of control of the chancellor has already been described. The body in which the corporate powers rested at the end of the century was the body of masters. The control of admission to their own body was obtained by the University of Paris before the history of the Univer-

sity of Oxford probably began. Control of the activity of masters by their associates was constantly strengthened. By the Legatine Ordinance of 1214, masters that had continued to lecture in Oxford after the *suspensum clericorum*, probably decreed by the masters as a body, were punished by three years' suspension from the privileges of lecturing. The status of a scholar came to be recognized as dependent upon the masters; in 1231 the expulsion from Oxford by the sheriff of all scholars not studying under a regular master was ordered by the king. The control of the chancellor's office was in the possession of the masters that elected him. In the middle of the thirteenth century university statutes were passed "by authority of the chancellor and masters regent, with the unanimous consent of the non-regents." Where the pressure upon the masters to preserve their unity did not come from without, the most effective instrument used by the body of masters to accomplish that end within itself was the "withdrawal of the fellowship of masters," the penalty suffered (in the middle of the thirteenth century) by those who on their inception refused to take the oath to keep the peace and obey the statutes of the University.

The original significance of becoming a master has been considered.¹ Very early it became true that not all who acquired the right to lecture implied in the mastership cared to avail themselves of its exercise, though it had been granted originally on the condition that it should be actually exercised at least for a limited period. The mastership was readily viewed as an evidence of the scholar's completion of his work,—rather as the end of his studying than the "commencement" of his lecturing. The degree became largely a certificate of merit and was granted as such by a dispensation (or "grace") on the part of the masters, relieving the inceptor from the obli-

¹ *Supra*, p. 261.

gation of subsequent lecturing and other conditions relating to the practical significance of the degree; possibly the masters were very willing to confer exemptions that would keep their number small at a time when their whole remuneration consisted of fees paid by scholars. Those masters who actually lectured were called regent masters or regents; those who did not lecture were called non-regent masters or non-regents. The lecturers were divided into the four faculties of arts, medicine, law¹ and theology. The separate faculties, however, never attained a great degree of independence of each other; though each had charge of matters relating particularly to its own work, it was always liable to be overruled by the other faculties. The only departure from the principle that the whole body of masters was the true unit of university life was in the attainment by the faculty of arts of a position of predominance over the other faculties in some respects; the initiation of statutes was under its control, though it never succeeded in establishing the power to veto statutes after their passage; in 1252 a statute was passed that "no one should be admitted to the license in theology who had not previously been a regent in arts"; moreover, through the control of the body of non-regents by the artists, the faculty of arts had an ally that virtually doubled its weight in the deliberations of the university body.

At the end of the thirteenth century, when the constitution of the University had become substantially settled, the system of government was as follows: (1) When the regent masters of arts met in a body for the purpose of transacting matters relating to their department, they were known as the Congregation of Regents in Arts, or more familiarly, the Black Congregation. They elected the two proctors, of whom the senior presided over their body when in session, though both were executive officers

¹ The doctors of civil law and canon law sometimes acted separately.

of the whole University. One of the most important of their duties was the celebration of inceptions in arts. Constitutionally more important, they had the authority to entertain a preliminary discussion of proposed statutes intended to bind the whole University; when assembled for that particular purpose, they were called the Previous Congregation. (2) Above the first body was a congregation of the regents of all the faculties, called the Lesser Congregation. It was virtually the legislature of the University. Matters of business, in the narrower sense, came before it, such as the management and disposition of its property and the details of income and expenditure. It elected the chancellor. Technical educational matters relating to the work of lecturers and scholars and the conferring of degrees were considered. Theoretically the chancellor himself conferred the degrees—the original *licentiæ docendi*,—but the Lesser Congregation had the power to dispense by “graces” with some of the conditions earlier imposed, unless the dispensation were reserved by statute for the consideration of the Full Congregation. It was very easy to confuse the dispensation and the implied recommendation with the conferring of the degree, especially when the granting of the grace became a quite universal preliminary; the power of actually conferring the degree was accordingly lodged in this body later. (3) The third body was the congregation of all regents and non-regents, and was called the Great Congregation or Full Congregation. If the Lesser Congregation was the ordinary legislature of the University the Great Congregation might be regarded in some respects rather as a constitutional body. It alone had the power to pass a “permanent statute.” It also acted on some matters specially reserved for it. The separate faculties voted in separate places as units. The non-regents also voted as a separate unit and as such were called one of the faculties.

In the administration of his court the chancellor brought his powers to bear on clerks in their contact not only with townsmen and the wider body of the king's subjects but also with one another; in the latter class of relations his jurisdiction had increased largely at the expense of the Church, and consequently suffered less from the supervision or interference of the king or his courts. In 1280, when the University succeeded in defending the jurisdiction of the chancellor against the Bishop of Lincoln,¹ and even secured from a provincial convocation of bishops a denial of the right to even exercise an appellate jurisdiction in the classes of cases in question, a judicial action of the chancellor was treated much as one of his administrative acts would be treated. An appeal lay from his decision to a Congregation of regents and then to a Great Congregation of regents and non-regents. Controversies of small importance, however, were heard by the Hebdomadarius, a bachelor of law appointed by the chancellor each week, as indicated by his official name; they might then be taken by appeal before the chancellor or some officer who should have his authority to act in his place; they might then be carried higher by appeal like other controversies. As a matter of practice, cases when appealed to the congregations were not heard by them directly and in full session, but by boards of delegates of each faculty selected for the purpose. It may be said, then, that in the regulation of the relations of masters and scholars to one another or to the University, a system of specially designed courts had developed in the Hebdomadarius, the chancellor or his representative, and the boards of appeal of the congregations.

V—The Colleges in the Universities

The movement that resulted in the gradual dissolution of the University of Oxford into its colleges must be ap-

¹ *Supra*, p. 269.

proached from two directions, from within the University and from without it; it was the composite effect of the internal tendency to community of living and the external application to university life of external forms of ecclesiastical organization. In the early part of the thirteenth century the scholars of Oxford lived in the houses of townsmen or in small groups in hostels or halls. The lectures to which they listened were delivered in schools rented by the masters and doctors. The domestic life of the hostels or halls and the activity of the schools were quite distinct. Under the circumstances, little control over the personal conduct of scholars could be exercised by the University. The scholars of mediæval universities were turbulent in the extreme. If the spirit that dominated mediæval institutions were to manifest itself, the scholars would be expected to find spontaneously an organization in smaller groups, and then be held accountable for their behavior through an elective head by the University. The individual scholar, living by himself, and pretending to keep the peace through his individual efforts, would be out of harmony with mediæval institutions. If the statements of historians may be credited, the "chamber-dekyns," the scholars that lived in lodgings with the townsmen, were the most troublesome and unruly members of the University. In tavern brawls, "town and gown" riots and contests between university nations they were always prominent actors. Moreover, many who came to Oxford, not to study, but to enjoy the attractions that a university town presented even in the thirteenth and fourteenth centuries, assumed the name of scholar merely as a cloak for their excesses; such persons adopted the life in lodgings of the "chamber-dekyns" and increased the odium that properly attached to the class. That such spurious scholars existed in Oxford is evidenced by the royal order as early as 1231 that all scholars be expelled by the sheriff from Oxford

except such as were studying under a regular master. In 1432 it was enacted that all scholars should reside in colleges or halls, on pain of imprisonment, and that no townsmen should accept scholars as lodgers unless he had the special license of the chancellor so to do.

There is good reason to believe that the several hostels or halls were occupied by scholars having common sympathies due to their having come from the same county, region or nation. In the continental universities the hostels were very frequently occupied by fellow-countrymen. Meagre as are the details of early life in them, they are sufficient to indicate a considerable degree of organization. The residents of the hall elected a principal, probably annually, and possessed bodies of rules to which the scholars had to conform. An officer called the "imposter," elected or appointed each week, acted as a dean in the enforcement of the rules, punished infractions of them by the imposition of fines and made a report to the principal at the end of the week. Moreover, disputations came to be regularly held in the halls, thus supplementing the work of the masters. It is very likely that the principal supervised such work to some extent, for it was finally required that he should be a graduate. The University gradually asserted its authority over the halls. In 1411 self-government was to some extent assured by a university statute that no principal of a hall should be permitted to receive into his hall scholars expelled from others for breaches of their statutes. An arbitrary requirement of qualifications in principles was involved in the refusal of the chancellor to sanction the leasing of halls to certain principals and in his later assumption of the right to expel them if exceptionable in character. In the code of statutes passed in 1432, some of which must have been merely in confirmation of existing customs or rules, it was required that scholars reside in the halls of principals "lawfully approved and admitted

by the Chancellor and Regents." At about the same time statutes for the regulation of the halls were enacted by the chancellor "with the advice and consent of the Congregation of Masters and of the Principals of Halls." The University assumed the right to veto statutes enacted by the halls, and even enacted statutes for them without their participation or consent. The principal, too, was, in 1432, required to be a graduate. By the end of the fifteenth century the University had established complete control over the halls.

The period, covering about sixty years of the fifteenth century, between the suppression of Lollardism and the Renaissance was one of stagnation in Oxford. In 1438 it was complained that the halls were deserted, and that the number of scholars had dwindled from several thousands to one thousand; in 1450 only twenty of the former two hundred schools are said to have remained in use. The loss of members and decrease of activity were almost entirely at the expense of the unendowed halls. When the reaction came at the end of the century it had its effect not in the revival of the halls, but in the enlargement of the colleges. Moreover, during two centuries the halls had largely come under the control of the colleges. By the end of the first period of university history the system of halls was a thing of the past; the few that remained were merely appendages of the colleges.

After the Mendicants set up their establishments in Oxford in the thirteenth century many scholars made their home in them and studied in their schools. In most respects they offered advantages superior to those of the halls. They were better regulated and better managed. The discipline to which their inmates, both friars or novices and secular scholars, had to submit commended them to parents and guardians of younger scholars. The students did not indulge in riots, and the social life of the houses was quieter and more favorable to

study. They possessed libraries, if their meagre collections of manuscripts deserved the name. Finally, the religious instruction and exercises that seem to have been wholly wanting to the halls, were not overlooked in the houses of the Mendicants. The older Benedictine monasteries followed the example set by the Mendicants and also set up their halls and colleges in Oxford. In 1289, at a chapter-general of Benedictines held at Abingdon, a tax of two pence per mark on their revenue was imposed on all their monasteries in the province of Canterbury to provide for the foundation and support of a studium for Benedictine monks at Oxford. In such institutions the monks from the several monasteries appear to have occupied separate parts of the hall under whose roof they formed a common domicile. Likewise some of the larger monasteries, as that of St. Peter at Gloucester, established separate studia at Oxford, though they frequently admitted monks of other monasteries and even secular scholars. The organization of the Benedictine and Mendicant studia was merely that of the monasteries themselves; they were presided over by a prior, elected by the chapter-general for studia open to all monasteries, and appointed by the abbot for such as were intended exclusively for the monks of a particular monastery. They were, of course, suppressed at the Reformation. Their chief importance in the development of the college system lies not so much in their direct imitation by founders of colleges as in the stimulus they gave to such founders to introduce the institutions of the Church into the field of education.

It is universally agreed by historians that many of the Oxford scholars were drawn from the lower and poorer classes of society. The frequency with which the "poor scholar" is mentioned in the sources of university history is a sound basis for the statement. The plane of life of university scholars was mean in the extreme. Actuated

by love of learning and the philanthropic purpose of aiding poor scholars, the desire to promote the interests of the Church or the more personal desire to better the superstitious philanthropist's status in the future life, certain mediæval philanthropists set apart property by gift or will for the support of poor scholars. Thus William of Durham, in 1249, left to the University by will the sum of three hundred and ten marks for the support at Oxford of ten scholars, natives of the county of Durham, and John Balliol made a similar benefaction for poor scholars about fifteen years later; no system of organic relations between the beneficiaries was established in either case; they appear to have not even lived together at first. A few years afterwards Dervorguilla, wife of John Balliol, increased his benefaction so that it would provide each of sixteen scholars with an annual stipend of twenty-seven marks, and collected the beneficiaries in one house; in 1282 she provided a set of statutes by which they should govern themselves; in 1292 the University took a similar step with the beneficiaries of William of Durham, bringing them together in the "Great Hall of the University." Walter de Merton had given similar assistance to poor scholars at Oxford. In 1264 he had founded a "House of the Scholars of Merton" at Malden, in Surrey, and had placed it, together with the estates intended for the support of the scholars, in charge of a warden and bailiffs; two or three priests or chaplains were attached to the establishment; the scholars, twenty in number, were to live together in a hall or house at Oxford, or wherever else there should be more suitable university schools. In 1274 the establishment in Surrey was united by Walter de Merton with the body of scholars in the hall at Oxford under a comprehensive code of statutes, which are considered to have served as a model for not only University and Balliol Colleges, but for most of the later foundations in both

Oxford and Cambridge. Such was the origin of the three earliest Oxford colleges, exhibiting all the internal stages in the evolution of the college from the individual scholar. The individual beneficiaries of William of Durham, Balliol or Walter de Merton did not differ at first from other scholars. When they were brought together in a common house they constituted a hall. When their self-governing interrelations and their relations to the property whose income they enjoyed and to the Church whose interests they promoted were given stability and permanence by a body of statutes, they constituted a normal Oxford college. Though each college had its peculiarities of organization, they had greater similarity than is usually supposed. After considering their general features, an examination of their relations to the University and Church and to each other will be of advantage.

The founders of colleges were those who provided by gift or will the endowments for their support and composed the bodies of statutes by which they should be governed. A few were founded by the king or queen and a few by wealthy private persons, but the majority by bishops and others who held high office in Church or State.¹ In order, particularly, that the statute against alienating lands in mortmain might not be violated, and, more generally, that the royal favor might not be wanting, the consent of the king was first obtained; in order, similarly, that no obstacles might be presented by the Church, the sanction of the Pope was also obtained. In the early history of some colleges, the endowment was for a time vested in an outside body, who managed the property and turned over to the college the revenue derived from it; thus the endowment of Exeter College

¹ Corpus Christi College in Cambridge was founded jointly by two gilds of the town of Cambridge—those of Corpus Christi and of the Blessed Virgin.

was early in charge of the dean and chapter of Exeter, who managed it and remitted periodically to the college the revenues received from it. The endowment of the original founder was in most cases augmented in later years by those of other benefactors, who were sometimes honored with recognition as co-founders; the successive endowments were not always amalgamated; the later ones were frequently kept distinct and devoted to the support of additional fellows or lecturers under a distinct body of statutes. Part of the endowment was usually the land and buildings occupied by the college; though for some years rented property might be used, the college eventually acquired land for its purposes. The founders of colleges were actuated by three motives: they aimed to advance the interests of the Church, to promote education and learning or to better their own prospective status in the future life; they were usually actuated by all three motives in combination. The interests of the Church might be advanced in no better way than by the provision of more ample means for the education of the priesthood, not merely in the restricted field of theology, but also in the wider field of general knowledge; a college might even be intended to combat a particular heresy, as Lincoln College¹ to combat Wycliffism, or, like New College, to compete with the monastic and Mendicant orders by raising the intellectual plane of the secular priesthood. Even though in most cases the learning that a poor scholar might be assisted to secure may have been intended to strengthen the Church, in many of them pure love of learning for its own sake was sufficient to arouse the benevolence of the founder. The most common aim was more purely personal; the exten-

¹ An oath against the heresies of Wycliffe was exacted from all fellows of Lincoln on their admission; and any fellow who afterwards embraced them was required "to be cast out, like a diseased sheep, from the fold of the college."

sion of assistance to needy scholars was a form of charity that, along with the advancement of the interests of the Church, was expected by the superstitious mediæval founders of colleges to redound to their advantage in the future life¹; not only was that result expected to follow the act of charity, but particular provisions were usually made that their endowments should be compensated for by the colleges to some extent, by the celebration of masses and the offering of prayers for the repose of their souls and of those of their ancestors and descendants. A somewhat more worldly phase of the motive of personal interest appears in the frequent reservation of preferences for "founder's kin" in the bestowal of memberships in the colleges. It was quite in harmony with the religious motives of founders that colleges should be nearly always dedicated to saints or religious symbols, and that their names should be as frequently religious in suggestion.

The members of a college—using the term not in its technical strictness, but so widely as to include all the members sustaining organic relations to the group and excluding only mere employees—were (*a*) the visitors, (*b*) the head, (*c*) the fellows, (*d*) the scholars, (*e*) the almsmen, (*f*) the commoners, (*g*) the lecturers and (*h*) the chaplains. (*a*) The visitor was virtually the successor of the founder, and had the power to investigate the affairs of the college at any time, to ascertain whether the statutes were being faithfully observed, to compel compliance with their terms, to receive newly elected heads into their office and to remove heads if on complaint of the fellows they should be found "useless or negligent, or luxurious or vicious," or, more generally, if their

¹ John Balliol's benefaction was part of a penance imposed on him by the Bishop of Durham for having "gotten himself drunk with beer, quite contrary to the fair esteem beseeming his rank, and [for having] done other evil disrespectful to the Church . . . He suffered scourging at the hands of the Bishop, and assigned a sum of fixed maintenance to be continued forever to scholars studying at Oxford."

retention in office would be detrimental to the welfare of the college; the validity of some acts of the college, such as the passage of new statutes, often depended on the sanction of the visitor; in some colleges he had power to interpret, declare, harmonize, correct and modify the statutes, or even to enact new ones; the visitors were most usually bishops or archbishops, though the king, the chancellor or some master of the University, a mendicant friar or private person held the office in some colleges; in a few cases (of the early colleges) the right of visitation was vested in two or three persons acting jointly; in only one college was the visitor elected by the collegiate body. (*b*) The head of the college, variously called warden, master, provost, president or rector, was quite universally (except in the early history of some colleges) elected by the fellows or a select number of them, though not necessarily from their own number; he was required to be in holy orders, but was to lose his office on the acceptance of a benefice or the acquisition of an independent income¹; though in some of the earlier colleges he was elected annually, his office came to be universally permanent; he had actual oversight of the work of the college and particularly of the administration of its endowment; he presided over the fellows in their meetings and was usually elected from among their number; in the later history of the colleges, he became somewhat more remote from the fellows, lived in a separate house and deputed many of his functions to a sub-warden, vice-president or dean. (*c*) The fellows originally named by the founder constituted a close body, statutorily limited in number to from ten to seventy members,²

¹ The rector of Lincoln, however, was permitted to hold a benefice in addition to his office in the college.

² The number of fellows was not definitely fixed in the early codes of college statutes, but was expected to vary with the income, increasing or diminishing with it; it depending also on the amount of the individual fellow's stipend, which varied according to the cheapness or dearness of products.

filling their vacancies by co-optation¹ and devoting themselves to the particular studies prescribed by statute; they were the original "poor scholars" of the thirteenth century and formed the nucleus of the collegiate body; their chief qualifications were that "they excel in poverty, ability and manners" and be of legitimate birth,² but kinsmen of the founders and natives of particular counties or dwellers in the vicinity of college estates or scholars on the foundation were frequently given a preference by statute in elections to fellowships, as well as to the scholarships; the fellows also exercised the legislative powers of the college, within the limits imposed by the foundation-statutes, though often subject, in many particulars, to the sanction of the visitor and to his interpretation of the limits of their powers; they might similarly secure the removal of the head, if he should be unfaithful to his office, by complaint to the visitor after having thrice admonished him; some of the fellows also usually performed official duties, as those of vice-principal, bursars, secretaries or chaplains, for which they received remuneration in addition to their fellows' stipends; they were usually admitted on probation for one or two years before entering into their full status as fellows, and during the period were in some colleges not permitted to share in the management of collegiate affairs; they were often in separate classes having different rights and duties and perhaps supported on the endowments of distinct benefactors, the legislative power being frequently exercised by one, the senior or earlier endowed class, to the exclusion of others; they were uniformly required to be in holy orders or to enter them within a limited time after election or after having taken a degree, but they

¹ Oriel College was unique in having its fellowships open to competition, though they were in its later history supplemented by a few "close" ones.

² At Queens College, however, illegitimate fellows were allowed a longer time for entering into holy orders, probably to enable them to obtain a dispensation.

lost their fellowships and their stipends ceased if they accepted a benefice, acquired an independent income, renounced celibacy, ceased to reside in college or to study diligently, "entered any religion" by becoming a monk or friar or accepted a fellowship in another college; the fellowships of the thirteenth century had been intended to aid the scholar until the attainment of his degree, but they later gradually became permanent, at least to the extent of covering the period between the degree and the benefice; likewise the fellows had originally been mere scholars studying for degrees, but later bodies of statutes required them (or a part of them) to be at least bachelors¹ and to assume the work of instructing inferior scholars in the college; though even then the fellowships were often limited to a definite number of years (as to fourteen years in Exeter College) they might be summarily (without right of appeal) expelled for committing crimes, violating the statutes, raising scandals or quarrels, or fermenting discord, and might be readmitted only in cases of small misdemeanors followed by unfeigned penitence; it was wisely provided that they should not be admitted on the request of lords or other influential persons. (d) Below the rank of fellows in the developed Oxford college and supported on the same foundation² were the scholars, limited in number and coming, like the fellows, by preference from particular counties or parishes; they were undergraduates admitted on probation for a year after an examination by a college examiner to determine their admission or rejection, and held their scholarships for a limited period or until they should have taken their degrees, in some colleges they were preferred in the election

¹ In Lincoln College undergraduates might be elected fellows but did not thereby acquire the right to participate in the government of the college until they should have taken their degrees.

² Though the scholars were usually entitled to a fixed allowance from the college revenues, the provision is often found that a small number of poor scholars be maintained from the remnants of the tables in the common-hall.

to vacant fellowships¹; in addition to their attendance on the masters of Oxford schools they were instructed, especially from the fifteenth century, by the fellows and latterly by special principals and tutors who might or might not be fellows concurrently; in addition to the pursuit of their studies, they were required to wait on the tables in the common-hall and perform other menial services for the fellows, to sing in the chapel, and to otherwise act in a subordinate capacity in the common life of the college.* (e) Connected with some of the earlier colleges and dependent on fixed allowances from their revenues were a small number of indigent men and women, who were, of course, no part of the student body; thus it was provided in the statutes of Queen's College that thirteen poor men and poor women should be fed daily in addition to a general distribution of soup at the college gate. (f) Beside the fellows and scholars, many colleges had within their walls a body of scholars who were "not on the foundation,"² who did not share in the college revenues, but paid for their accommodations, and were usually called "non-foundationers" or "commoners," while other colleges would not admit merely boarders or roomers, but only those who also received instruction; usually limited by statute to the "high-born," to sons of the nobility and gentry, they were admitted by common consent of the fellows on condition (in University College) "that before them [each] shall promise whilst he lives with them, that he will honestly observe the customs of the fellows of the house, pay his dues, not hurt any of the things belonging to the house, either by himself or those that belong to him";

¹ New College was unique in its connection with Winchester College, to whose scholars its membership was restricted.

² In Magdalen College the scholars were known as Demics (*demi-socii*, half-fellows), as receiving half the commons of a fellow.

³ All Souls' College was peculiar in having no scholars or "non-foundationers,"—its members were all fellows.

the class increased with the disappearance of the old Oxford halls and with the growth of a system of instruction within the colleges, while by reaction the halls suffered from the absorption of scholars by the colleges. (*g*) As the activity of the colleges became more complete in itself and to comprehend more fully the instruction of their inmates, lecturers, readers and tutors in special branches of study were attached to them and supported on definite stipends paid from their revenues; in most cases, the work done by them had previously been done by fellows, who received fees and other compensation for it, and even after they were separately provided for, they were often made eligible to fellowships concurrently. (*h*) The religious side of college life was never neglected by founders; the fellows were in many colleges required to act in the capacity of chaplains, but in most of them chaplains were specially provided for; sometimes elected by the fellows or appointed by a bishop or dean and chapter with their consent, they generally owed their office to the choice of some authority outside of the collegiate body.

Several features of the life of the mediæval Oxford colleges not directly involved in a description of the classes of persons comprehended in them may be noted with profit. Their domestic life was regulated to the minutest detail by their statutes. The hours of rising, of the two principal meals of the day and of retiring were definitely fixed. The articles of diet, the manner in which they should be prepared for the table, the amounts of them that should be consumed and the limits of the expense to be incurred in providing them were prescribed. The head (if he did not live separately) and the senior fellows, with perhaps some of the lecturers and "commensales," might alone dine at the high table in the common-hall; an inferior class dined at a lower table; and still lower classes used the remaining tables indiscriminately; the

poor scholars that waited on the tables ate after the others had finished. The common speech at table was required to be in Latin; if a scholar should make bold to use his mother-tongue, he was subject to reproof by the principal, and if twice or thrice reprov'd without amendment, to be put away from the table and to be last served; at Queen's College, a single exception, French might be spoken in place of Latin. A domestic establishment complete in all respects was contemplated; clerks, secretaries, caterers, dispensers, millers, bakers, cooks, scullions, brewers, porters, barbers, gardeners and night-watchmen were among the employees provided for by statutes. If a common dormitory was used, a monitor usually presided over it to observe and report infractions of rules. If separate chambers were used, the number of occupants allotted to each was settled; if a fellow was entitled by the statutes to the services of a poor scholar, they were required to occupy separate beds in the same chamber. The care of the person was not beneath the consideration of the statutes. Even the manner of shaving the head was dictated. "No fellow, chaplain, clerk, scholar or chorister shall grow long hair, or a beard, or wear peaked shoes, or red, green or white shoes." A college livery was often prescribed and sometimes furnished annually, at least to the extent of a hood, at the charge of the college revenues. In their manners, members of superior classes were charged not to be overbearing towards their inferiors, and the rich were not permitted to oppress the poor. Creating or disseminating scandal, inciting quarrels or discord or revealing the secrets of the college might be punished by expulsion. Fellows were not to delay to use their good offices in pacifying controversies, and had power to punish minor infractions of rules summarily. For the further preservation of order and enforcement of regulations, the scholars were frequently divided into groups of ten with a dean

over each group. All forms of rudeness, such as jumping, shouting, dancing in the chapel or halls and playing on musical instruments immoderately, were punishable. Most of the crimes known to the mediæval criminal calendar were catalogued in the college statutes and their commission visited with expulsion. The lawlessness of poaching, fighting or quarrelling, drinking to excess, frequenting taverns and play-houses and wandering about at night after the college gates had been closed was emphasized. Amusements were closely restricted, especially within the college walls; among the rougher diversions, attendance either as participant or spectator at tiltings and wrestling and boxing contests was forbidden. Suffering the presentation of comedies in college near the end of the fifteenth century was an exceptional indulgence. The presence of guests was regarded as detrimental to study; they were accordingly excluded except they should be prominent persons to be entertained by the warden. The rule of exclusion was extended from guests to animals and birds. "No one shall keep in the college hounds, rats, ferrets, hawks or falcons for sport, or monkeys, bears, foxes, deer, badgers or any other wild beasts, that would be unprofitable or dangerous to the college." That the fellows might not plead ignorance of the statutes, they were publicly read to them once a year. Murmuring against them, or incorrigibility for a week, was punished by expulsion. If the external world was carefully excluded from the college, its internal life was with equal care preserved from actively coming in contact with the outside world. Residence in college, in some of them even during vacation, was mandatory, except when the coming of a pestilence made it advisable for the whole body to retire for a time from the city. In the management of the college estates, the provisions for which were in great detail, an annual tour over them by the head and fellows (or part of them)

was made at the time of the annual audit of accounts. For the transaction of the more important business, the election and admission of fellows, and the inquisition into the work of the scholars, from one to three chapters were held annually. If the warden or other head should become incapacitated for the discharge of his duties, he was relieved by the election of another in his place and retired on an ample pension. Likewise the fellow or scholar was provided for in sickness and even supported outside the college if his restoration to health demanded it. On the other hand, fellows were enjoined to aid and assist the college if after the severance of their connection with it they should find exceptional fortune in the world.

There was nothing in the original extension of aid to "poor scholars" by William of Durham, John Balliol, and Walter de Merton in the middle of the thirteenth century to threaten a serious modification of the scholars' relations to the University. Such evidence of the disintegration of the University as then existed was to be found in the previous "spontaneous" growth of the Oxford halls. When the benefactors brought their benefactions into harmony with the existing aularian system by introducing community of living among the several groups of beneficiaries, they did no more than to promote the disintegration already implied in the development of halls, though the influence of adding a more substantial economic basis could not have been slight. The extent to which the halls became independent and autonomous centres of study and instruction within the University, and in a sense in opposition to it, has been suggested; in their activity, however, they did not compete with the University so much as they really supplemented its activity; the University schools still flourished and the inmates of halls still attended lectures in them; the disputations and other exercises of the halls were to a large extent new elements in University education, the elements that

are now exaggerated in college courses in which textbooks are used. The Mendicants and monks took a step in advance of the hall communities in providing more extensively for the instruction of their scholars, for the plain purpose not of supplementing but of supplanting the work of the University schools. The University was more or less successful in its contest with the friars because it had the support of the Church. When the secular colleges were founded by ecclesiastics or by persons under their influence, largely for the purpose of fighting the friars and monks with their own weapons, the work of disintegration, already well begun by the halls and religious houses, was carried rapidly forward. Though the University was able to establish complete control over the halls through the power of disqualifying or removing their principals and of making, vetoing or modifying their statutes, it very clearly had to be content with control and not aspire to the absorption of the halls; to the extent that they flourished, even under the direction of the University, the University was not performing its functions directly, but indirectly through the halls as organs. Even more truly was the University unable to fully control the interior activity of the religious schools; the moderate control that it succeeded in establishing consisted partly in placing limitations, in the first instance, on the admission of scholars to them, and later on the admission of their scholars to the status of University graduates, and partly in circumscribing the participation of their representatives in the government of the University itself. Just as in the halls, the extent of the work done in the religious schools was the measure of the extent to which the University failed to do its own work directly and had to rely on its being done indirectly through them. The colleges were far more independent and autonomous than either the hall communities or religious bodies. At first, however, they relied on the

University schools for the instruction of their scholars; they were content to prescribe the domain of their scholars' work and to regulate the details of their common life. Such educational work as they did was largely supplemental, like that of the halls; the nature of it is clearly suggested in one of the statutes of Balliol College, by which it is provided that under the supervision and correction of the principal there should be one "sophism" each week "to be discussed and determined" in the house "and this should be done in turn, in such manner that the sophists should introduce and reply, and they should determine who should have determined in the schools." It was a common statutory provision that "poor scholars" should be daily "opposed" by the fellows at dinner before going to their own table. The fellows, called scholars in the statutes of early colleges, were at first merely what their name indicated—scholars—and were not required to be graduates; the more advanced fellows were then given the somewhat indefinite duty of aiding the less advanced ones in their studies; next the fellows (or part of them) were recognized as definitely obligated to instruct others on the foundation, as in New College, where the "tutorial" system is said to have had its origin, and were allowed for their services compensation in addition to their stipends, as well as fees paid to them by the scholars; in short, the fellows developed into teachers and were required to be graduates, while those actually engaged in studying formed a new and inferior class, known by the name the fellows had originally borne—scholars. As the system of teaching became more nearly complete in the colleges in the fifteenth century, special lectureships in some branches of work were endowed for the accommodation of the scholars. The movement extended even beyond the boundaries of the colleges when at the end of the fifteenth century their lectureships were thrown open to the whole University, as were those in theology,

moral and metaphysical philosophy and natural philosophy in Magdalen College, and those in Greek and Latin in Corpus Christi College. Nor did they suffer seriously from the competition of the meagrely endowed University lectureships founded by Henry VIII. As college instruction became more extended, the University dispensed more fully with the requirement that scholars hear lectures in the University schools, as it with equal liberality dispensed with the requirement that candidates for degrees lecture in them. Meanwhile the commensales, originally merely boarders in the colleges, attending the University schools, had become pupils in the colleges and were not accepted unless they would not only live but also receive instruction in them. The college instruction had first been extended in the higher faculties, instruction in arts and grammar being left longer to the University schools and grammar schools; in the statutes of Queen's College it was first provided that arts should be taught in college; by the end of the fifteenth century all effective instruction in arts had been absorbed by the colleges. Pupils had been received from the grammar schools of Oxford (supervised by the University) and from other grammar schools; the colleges provided for such instruction within their walls by a teacher of grammar, who might or might not be a fellow, until, as in Magdalen, the scholars' fitness to begin arts should be determined by examination; in this field New College even expanded beyond Oxford and the University by relegating the work in grammar to Winchester College, from whose graduates its scholars were exclusively chosen; other colleges were obligated to maintain from their revenues grammar schools outside of Oxford, to which, however, they sustained no other close relations. The broad fact is that by the middle of the sixteenth century the work of instruction in the University had been transferred from its schools to the colleges, and that in many of them scholars might

obtain all the instruction leading to their degrees without attending the University schools at all. The development of the "college monopoly" was promoted even by the character of the books used. The expensive manuscripts of the thirteenth century had been almost exclusively the property of the lecturing masters, but when the colleges were founded their statutes usually extended to their scholars the common use of the books in the college libraries. The colleges first established what are now known as "entrance examinations," thereby assuming the determination of the fitness of a prospective scholar for the status to which he aspired. The University came to depend for its definition of a scholar on the determination of the statutes of the colleges.¹ The power of conferring degrees, however, never departed from the University; every step leading to the degree might be under the control and supervision of the colleges, but the final conferring of the degree remained the function of the University.

The Oxford colleges, whether founded by churchmen or by persons under their influence, were so manifestly the fruits of a pious purpose that they were given forms of organization modelled on the corporate forms of the Church, while the permanence of their constitution and the fidelity of their life to the purpose of their foundation were assured by their almost universal subjection to the visitorial authority of bishops. Some of them, not only from their structural form, but even from the substance of their activity, might justly be classed with the chapters of cathedral or collegiate churches, their educational structure and activity being conceived as merely annexed to them, just as most other ecclesiastical corporations had schools annexed to them; but in others the structure, though plainly ecclesiastical, was predominantly occupied by educational activity, while the substantially

¹ Just as citizenship in the United States is dependent, in many respects, on citizenship in the several States.

ecclesiastical functions were performed by chaplains or otherwise subordinated to the educational activity. The normal form of the Oxford college, however, was that of the chapter of a collegiate church, though Henry VIII. converted Wolsey's Cardinal College into a dean and canons of Christ Church Cathedral with its Bishop of Oxford. The original endowment of Lincoln College consisted of the impropriations of three churches served by the fellows (though with the aid of chaplains); the three churches, with the college, virtually constituted a collegiate church, with the rector and fellows for its dean and chapter. It may hardly be said that monasteries or Mendicant houses were used as models of the colleges; when an attempt was made to place both secular and regular scholars on an equality on the foundation of Canterbury College, it proved a failure, and the former were eventually subordinated to the latter. If the colleges were intended to do for the Church what the Mendicant and monastic houses were doing for their orders, it was only a particular manifestation of the general purpose of their foundation. They were intended to promote the interests of the Church by supplying it with priests, and especially with learned priests—and that was the point of contest with the religious orders,—by protecting it against heresy, and by providing it with a body of ecclesiastics who could capably fill the great offices of state at that time invariably held by them. In accordance with their threefold purpose, theology and the canon and civil law were given such prominence in foundation statutes that the colleges may be well said to have been little more than ecclesiastical seminaries. The fellowships were almost universally not intended for the promotion of learning for its own sake, much less for the modern purpose of scholarly research, but to make learning subserve the ends of the Church; accordingly fellows were required to be in holy orders at the time of

their election or to enter them within a limited time thereafter, and some colleges virtually projected themselves into the Church by holding advowsons of benefices to which they nominated their fellows in the order of their seniority; some colleges, too, were virtually chapters of corporate churches, their fellows being members. The ecclesiastical nature of the colleges was also reflected in the routine of their interior life. Frequent (sometimes daily) masses had to be celebrated and daily prayers offered for the repose of the souls of founders or other benefactors and their ancestors and descendants, of the king and queen and their predecessors and successors, of the Englishmen who had fallen in a French war and of other persons. Each meal had to be preceded by a benediction and followed by the offering of thanks or prayers or the recital of the *De Profundis*; while dinner was in progress, either the chaplain or a scholar (who served in his turn) read aloud a portion of the Scriptures or of the writings of the Doctors of the Church. In some colleges even the canonical hours were observed. Inseparable from the college was the chapel in which the chaplain (or a fellow serving in the capacity of chaplain) officiated, while the scholars sang and otherwise participated in the services, and in which all scholars were required to perform their devotions on all Sundays and saints' days. In Queen's College a provost and twelve fellows were provided for in imitation of Christ and the Apostles, and the founders hoped that the scholars would be seventy-two in number, in imitation of the Disciples. But with all the strictness and elaborateness of their religious life, no "rule" was imposed on the colleges; they remained secular establishments. In general, the system of colleges was the medium through which the Church regained over learning the control that it had exercised before the rise of the university movement and during its early stages; during the twelfth and thirteenth centuries

the University of Oxford had attained such independence that it menaced the stability of the Church; through the disintegration of the wider University body into colleges and through the control of the colleges by the Church, an ecclesiastical sovereignty over the realm of learning was so firmly re-established by the sixteenth century that it was not disturbed until the nineteenth century.

END OF VOLUME I



14 DAY USE
RETURN TO DESK FROM WHICH BORROWED
LOAN DEPT.

The book is due on the last date stamped below, or
on the date to which renewed.
Renewed books are subject to immediate recall.

24Mar'59GM

29Sep'61DD

REC'D LD

REC'D LD

MAR 16 1959

SEP 15 1961

15Apr'59PW

27Feb'62DG

15Apr'59GG

REC'D LD

JUN 4 1962

REC'D LD

MAR 2 1962

APR 1 1959

REC. CIR. APR 2 '62

31May61TD

SENT ON ILL.

REC'D LD

JUL 13 1998

MAY 19 1961

U. C. BERKELEY

LD 21A-50m-9,'58
(6889s10)476B

General Library
University of California
Berkeley

m. 512

9

2 vols

d-es

mt

YC 84969

140605

HD

2721

D3

V.1

THE UNIVERSITY OF CALIFORNIA LIBRARY

